

### 3 Am. Jur. 2d Adverse Possession II E Refs.

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### E. Open, Notorious, and Visible Possession

[Topic Summary](#) | [Correlation Table](#)

## Research References

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  28 to 33

#### A.L.R. Library

A.L.R. Index, Adverse Possession

West's A.L.R. Digest, [Adverse Possession](#)  28 to 33

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 57

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### E. Open, Notorious, and Visible Possession

## § 57. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  28 to 30

One of the requisites of adverse possession is that the possession of the adverse claimant must be open and notorious,<sup>1</sup> or visible and notorious,<sup>2</sup> or open, visible, and notorious.<sup>3</sup> The purpose of this requirement is to provide the true owner of the property with adequate notice that a trespass is occurring, and that the owner's property rights are in jeopardy, so that the owner can take steps to protect his or her interests<sup>4</sup> or, in other words, to place the true owner on notice of the hostile activity of the possession so that the owner may have an opportunity to take steps to vindicate his or her rights by legal action.<sup>5</sup> The open and notorious possession requirement for adverse possession thus exists to ensure that the legal owner had cause to know of the adverse claim of ownership by another.<sup>6</sup>

#### Definitions:

For purposes of an adverse possession action, the term "open" means without attempted concealment.<sup>7</sup> The term "visible" means that the disputed land is capable of being seen by persons who may view it.<sup>8</sup> The term "notorious," for purposes of adverse possession, means known to some who might reasonably be expected to communicate their knowledge to an owner maintaining a reasonable degree of supervision over his or her property.<sup>9</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 § 9.
- 2 [Walter v. Jones](#), 15 Ill. 2d 220, 154 N.E.2d 250 (1958); [In re Rights-of-way and Easements Situate in Tp. of Mt. Pleasant](#), 47 A.3d 166 (Pa. Commw. Ct. 2012), appeal denied, 63 A.3d 1250 (Pa. 2013).
- 3 [Striefel v. Charles-Keyt-Leaman Partnership](#), 1999 ME 111, 733 A.2d 984 (Me. 1999); [Yaczak v. Cloon](#), 313 Mich. 584, 22 N.W.2d 112 (1946); [Greenwood v. Young](#), 80 So. 3d 140 (Miss. Ct. App. 2012).
- 4 [Striefel v. Charles-Keyt-Leaman Partnership](#), 1999 ME 111, 733 A.2d 984 (Me. 1999).
- 5 [Lawrence v. Town Of Concord](#), 439 Mass. 416, 788 N.E.2d 546 (2003).
- 6 [Schroeder v. Proctor](#), 280 S.W.3d 724 (Mo. Ct. App. W.D. 2009).
- 7 [Striefel v. Charles-Keyt-Leaman Partnership](#), 1999 ME 111, 733 A.2d 984 (Me. 1999).  
Possession is open, for purposes of adverse possession, if the use of the disputed property is without concealment. [Roll v. Bacon](#), 160 Ohio Misc. 2d 23, 2010-Ohio-5540, 938 N.E.2d 85 (C.P. 2010).
- 8 [Striefel v. Charles-Keyt-Leaman Partnership](#), 1999 ME 111, 733 A.2d 984 (Me. 1999).
- 9 [Striefel v. Charles-Keyt-Leaman Partnership](#), 1999 ME 111, 733 A.2d 984 (Me. 1999).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 58

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### E. Open, Notorious, and Visible Possession

## § 58. What constitutes open and notorious possession

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  28 to 30

Open and notorious possession, which is necessary to establish adverse possession, requires a showing of use consistent with ownership of the property.<sup>1</sup> For purposes of an adverse possession claim, open and notorious possession is satisfied by visible acts of ownership exercised over the property<sup>2</sup> or by such conduct as is sufficient to put a person of ordinary prudence on notice of the fact that the land in question is held by the claimant as his or her own.<sup>3</sup> A claimant thus can satisfy the requirement of open and notorious possession by showing that the claimant used the land such that any reasonable person would have thought he or she owned it.<sup>4</sup>

Open and notorious possession, for purposes of an adverse possession claim, is demonstrated by showing that the occupancy on the disputed property was conspicuous, widely recognized, and commonly known.<sup>5</sup> Moreover, if the acts of ownership are of such a character as to openly and publicly indicate an assumed control or use such as is consistent with the character of the premises in question, the open and notorious requirement of an adverse possession claim is met.<sup>6</sup>

#### Observation:

An adverse possession claimant's acts of dominion and control must be sufficiently open and notorious to constitute notice to all the world of an adverse claim of title.<sup>7</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Actual, open, and notorious possession, as required to establish title to real property by adverse possession, is established where a claimant shows use of the land to such an extent and in such a manner as to put the world on notice by means so notorious as to attract the attention of every adverse claimant. *Ka%7fUpulehu Land LLC v. Heirs and Assigns of Pahukula*, 136 Haw. 123, 358 P.3d 692 (2015).

In an adverse possession case, for possession to be "open and notorious," it is generally meant that the acts asserting dominion over the property must be of such quality to put a person of ordinary prudence on notice of the fact that the disseisor is claiming the land as his own. *Wallace v. Pack*, 749 S.E.2d 599 (W. Va. 2013).

## [END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- 1 [Acord v. Pettit](#), 2013 WL 992126 (Wash. Ct. App. Div. 3 2013).
- 2 [Williams v. Frymire](#), 186 S.W.3d 912 (Mo. Ct. App. S.D. 2006).  
Openness and notoriety are shown by the doing of acts that could comport with ownership, that is, such acts as would normally be performed by the owner in using his or land to the exclusion of others. [Cagle v. Hammond](#), 57 So. 3d 150 (Ala. Civ. App. 2010).
- 3 [Iowa R. Land Co. v. Blumer](#), 206 U.S. 482, 27 S. Ct. 769, 51 L. Ed. 1148 (1907); [Strickland v. Markos](#), 566 So. 2d 229 (Ala. 1990); [Finn v. Alexander](#), 102 Kan. 607, 171 P. 602 (1918); [Appalachian Regional Healthcare, Inc. v. Royal Crown Bottling Co., Inc.](#), 824 S.W.2d 878 (Ky. 1992); [Bloodsworth v. Murray](#), 138 Md. 631, 114 A. 575, 22 A.L.R. 1450 (1921); [Gustin v. Scheele](#), 250 Neb. 269, 549 N.W.2d 135 (1996); [Buttz v. James](#), 33 N.D. 162, 156 N.W. 547 (1915); [Warner v. Wickizer](#), 1930 OK 419, 146 Okla. 232, 294 P. 130 (1930); [Faulconer v. Williams](#), 327 Or. 381, 964 P.2d 246 (1998); [In re Rights-of-way and Easements Situate in Tp. of Mt. Pleasant](#), 47 A.3d 166 (Pa. Commw. Ct. 2012), appeal denied, 63 A.3d 1250 (Pa. 2013); [Bender v. Brooks](#), 103 Tex. 329, 127 S.W. 168 (1910); [Scott v. Hansen](#), 18 Utah 2d 303, 422 P.2d 525 (1966); [Jarvis v. Gillespie](#), 155 Vt. 633, 587 A.2d 981 (1991); [Downie v. City of Renton](#), 167 Wash. 374, 9 P.2d 372 (1932); [Bettack v. Conachen](#), 235 Wis. 559, 294 N.W. 57 (1940).
- 4 [Nickell v. Southview Homeowners Ass'n](#), 167 Wash. App. 42, 271 P.3d 973 (Div. 2 2012), review denied, 174 Wash. 2d 1018, 282 P.3d 96 (2012).
- 5 [Schroeder v. Proctor](#), 280 S.W.3d 724 (Mo. Ct. App. W.D. 2009).
- 6 [Anderson v. Poirier](#), 121 Conn. App. 748, 997 A.2d 604 (2010).
- 7 [Sea Pines Condominium III Ass'n v. Steffens](#), 61 Mass. App. Ct. 838, 814 N.E.2d 752 (2004).  
The open and notorious element of adverse possession requires acts of ownership that must be of a character so as to indicate to the community in which the land is situated that it is in the exclusive possession and enjoyment of the claimant. [In re Jake's Granite Supplies, L.L.C.](#), 442 B.R. 694 (D. Ariz. 2010) (applying Arizona law).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 59

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### E. Open, Notorious, and Visible Possession

## § 59. Notice to true owner

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  31

Possession is open and notorious, for purposes of adverse possession, if it places the true owner of the property on notice of an adverse claim.<sup>1</sup> A claimant thus can satisfy the requirement of open and notorious possession by showing that the title owner had actual notice of the adverse use of the property throughout the prescribed statutory period.<sup>2</sup> Actual notice of an adverse holding, however, is not ordinarily required if the circumstances are such that the owner ought to have such notice.<sup>3</sup>

The true owner of property is chargeable with knowledge of what is openly done, and therefore calculated to attract attention, on the owner's property.<sup>4</sup> If the claimant has taken action to put a reasonable property owner on notice that an adversarial claim on ownership is being made to his or her property, the possession of the property is open and notorious.<sup>5</sup> Thus, open and notorious possession may be proven by acts so open and notorious that the owner's knowledge of them and of their adverse character may be presumed.<sup>6</sup> In other words, the open and notorious use of a property is deemed to place the true owner on constructive notice of such use, for purposes of an adverse possession claim, and it is immaterial whether the true owner actually learns of that use or not.<sup>7</sup>

#### CUMULATIVE SUPPLEMENT

##### Cases:

Record owners' telephone calls and e-mails to neighbors asking neighbors to remove fence that encroached on owners' property, without more, was insufficient to place neighbors on notice that they had been ousted before expiration of 20-year adverse

possession period, where no further steps were taken by owners to disrupt neighbors' continued possession and use of disputed land. [O'Malley v. Little](#), 169 A.3d 954 (N.H. 2017).

To achieve title through adverse possession, the claimant's use or possession of the property must be so substantial as to put an ordinary owner on notice of the adverse possessor's claim to absolute dominion over the property. [Old Railroad Bed, LLC v. Marcus](#), 2014 VT 23, 95 A.3d 400 (Vt. 2014).

Visibility of a fence alone does not establish the showing of open, notorious, and hostile possession required for an adverse possession claim; an adverse claimant must show not only a fence but that his use of the fenced land was such that it put the record owner on notice of the adverse claim. [White v. Wheeler](#), 2017 WY 146, 406 P.3d 1241 (Wyo. 2017).

## [END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- 1 [McManus v. Kluttz](#), 165 N.C. App. 564, 599 S.E.2d 438 (2004).
- 2 [Nickell v. Southview Homeowners Ass'n](#), 167 Wash. App. 42, 271 P.3d 973 (Div. 2 2012), review denied, 174 Wash. 2d 1018, 282 P.3d 96 (2012).  
Record owners and record owners' predecessor were aware of the adverse possession claimants' possession of land up to the stone wall, and thus, the claimants' possession was notorious as an element of their adverse possession claim. [Mastroianni v. Wercinski](#), 158 N.H. 380, 965 A.2d 1139 (2009).
- 3 [Sorensen v. Costa](#), 32 Cal. 2d 453, 196 P.2d 900 (1948); [Estate of Wells v. Estate of Smith](#), 576 A.2d 707 (D.C. 1990); [Harrison v. Speer](#), 94 Fla. 937, 114 So. 515 (1927); [Keng v. Franklin](#), 267 Ga. 472, 480 S.E.2d 25 (1997); [Estate of Mark v. H.H. Smith Co.](#), 547 N.E.2d 796 (Ind. 1989); [Yatzak v. Cloon](#), 313 Mich. 584, 22 N.W.2d 112 (1946); [Anthony v. Searle](#), 681 A.2d 892 (R.I. 1996).
- 4 [Marvel v. Barley Mill Road Homes](#), 34 Del. Ch. 417, 104 A.2d 908 (1954); [Robin v. Brown](#), 308 Pa. 123, 162 A. 161 (1932).
- 5 [Schroeder v. Proctor](#), 280 S.W.3d 724 (Mo. Ct. App. W.D. 2009); [McGarry v. Coletti](#), 33 A.3d 140 (R.I. 2011).  
The notoriety requirement for establishing title by adverse possession is fulfilled when the record owner knew or should have known of the adverse possession; what a duly alert owner would have known, the owner is charged with knowing. [Vezey v. Green](#), 35 P.3d 14 (Alaska 2001).
- 6 [Emerson v. Maine Rural Missions Ass'n, Inc.](#), 560 A.2d 1 (Me. 1989) (overruled on other grounds by, [Dombkowski v. Ferland](#), 2006 ME 24, 893 A.2d 599 (Me. 2006)).
- 7 [Lawrence v. Town Of Concord](#), 439 Mass. 416, 788 N.E.2d 546 (2003).  
The adverse possession element of open and notorious pertains to the concept of constructive notice to the title owner; possession must be visible and notorious so that the owner may be presumed to have notice of it. [Senez v. Collins](#), 182 Md. App. 300, 957 A.2d 1057 (2008).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.



### 3 Am. Jur. 2d Adverse Possession § 60

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### E. Open, Notorious, and Visible Possession

## § 60. Particular acts of possession and notice

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  29 to 33

No particular act is required to establish an intention to claim ownership of property in order to satisfy the requirement of open and notorious possession for a claim of adverse possession,<sup>1</sup> and it is sufficient for the claimant to go upon the disputed land and use it adversely to the true owner.<sup>2</sup> Ordinarily, acts that make possession actual are sufficient to make it open and notorious.<sup>3</sup> Open and notorious possession may be satisfied by acts such as:

- the enclosure of the land<sup>4</sup>
- erecting buildings on the land<sup>5</sup>
- planting groves or trees on the land<sup>6</sup>
- maintaining and improving the property<sup>7</sup>
- frequent and regular working activities on the property, such as cutting timber<sup>8</sup>

On the other hand, the mere possession of land is not sufficient to satisfy the requirement of open and notorious possession.<sup>9</sup> Likewise, sporadic and temporary activity on the property is insufficient to give the true owner constructive notice of an adverse claim of possession.<sup>10</sup> An owner thus is not put on notice by occasional overnight visits,<sup>11</sup> occasional pasturing of cows,<sup>12</sup> or casual haycutting.<sup>13</sup> Furthermore, the fact that land appears to have been previously occupied is not notice to the owner of an existing intent of the former occupant to appropriate the land if the appearances indicate an abandonment of any such purpose.<sup>14</sup>

**Observation:**

Whether the occupation of an adverse possessor is sufficiently open and notorious to constitute notice to the owner is a question of fact in each case<sup>15</sup> and depends on the particular land and its condition,<sup>16</sup> character,<sup>17</sup> locality, and appropriate use.<sup>18</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

**Footnotes**

- 1 [McGarry v. Coletti, 33 A.3d 140 \(R.I. 2011\).](#)
- 2 [McGarry v. Coletti, 33 A.3d 140 \(R.I. 2011\).](#)
- 3 [Hillsmere Shores Improvement Ass'n, Inc. v. Singleton, 182 Md. App. 667, 959 A.2d 130 \(2008\).](#)  
As to acts that make possession actual, generally, see § 25.
- 4 [Wanha v. Long, 255 Neb. 849, 587 N.W.2d 531 \(1998\).](#)
- 5 [Wanha v. Long, 255 Neb. 849, 587 N.W.2d 531 \(1998\).](#)
- 6 [Wanha v. Long, 255 Neb. 849, 587 N.W.2d 531 \(1998\).](#)
- 7 [Schroeder v. Proctor, 280 S.W.3d 724 \(Mo. Ct. App. W.D. 2009\).](#)
- 8 [McManus v. Kluttz, 165 N.C. App. 564, 599 S.E.2d 438 \(2004\).](#)
- 9 [Ruggles v. Dandison, 284 Mich. 338, 279 N.W. 851 \(1938\); Taylor v. Bell, 87 So. 3d 1134 \(Miss. Ct. App. 2012\); Morgan v. Jenson, 47 N.D. 137, 181 N.W. 89 \(1921\); Baxter v. Girard Trust Co., 288 Pa. 256, 135 A. 620, 49 A.L.R. 1011 \(1927\).](#)
- 10 [La Due v. Currell, 201 Va. 200, 110 S.E.2d 217 \(1959\).](#)
- 11 [Hardy v. Bumpstead, 41 S.W.2d 226, 76 A.L.R. 1488 \(Tex. Comm'n App. 1931\).](#)
- 12 [Reeves v. Porta, 173 Or. 147, 144 P.2d 493 \(1944\).](#)
- 13 [Ennis v. Stanley, 346 Mich. 296, 78 N.W.2d 114 \(1956\).](#)
- 14 [Hardy v. Bumpstead, 41 S.W.2d 226, 76 A.L.R. 1488 \(Tex. Comm'n App. 1931\).](#)
- 15 [Nielsen v. Gibson, 178 Cal. App. 4th 318, 100 Cal. Rptr. 3d 335 \(3d Dist. 2009\).](#)
- 16 [Clanahan v. Morgan, 268 Ala. 71, 105 So. 2d 429 \(1958\); Nielsen v. Gibson, 178 Cal. App. 4th 318, 100 Cal. Rptr. 3d 335 \(3d Dist. 2009\).](#)
- 17 [Vezey v. Green, 35 P.3d 14 \(Alaska 2001\); Boothroyd v. Bogartz, 68 Mass. App. Ct. 40, 859 N.E.2d 876 \(2007\).](#)
- 18 [Nielsen v. Gibson, 178 Cal. App. 4th 318, 100 Cal. Rptr. 3d 335 \(3d Dist. 2009\).](#)  
When the land in question is wild, undeveloped, and covered in woods and hills, what is required to satisfy the open and notorious element of adverse possession may very well be increased. [Schroeder v. Proctor, 280 S.W.3d 724 \(Mo. Ct. App. W.D. 2009\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession II F Refs.

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### F. Exclusive Possession

[Topic Summary](#) | [Correlation Table](#)

## Research References

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  34 to 38

#### A.L.R. Library

A.L.R. Index, Adverse Possession

West's A.L.R. Digest, [Adverse Possession](#)  34 to 38

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 61

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### F. Exclusive Possession

## § 61. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  [34](#), [36](#), [38](#)

#### Forms

Forms relating to exclusive possession, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [[Westlaw® Search Query](#)]

One of the requisites of adverse possession is that the possession of the adverse claimant must be exclusive,<sup>1</sup> that is, the claimant must hold possession of the property for him- or herself, as his or her own, and not for another.<sup>2</sup>

Exclusive possession, for purposes of adverse possession, means that the claimant must show an exclusive dominion over the land and an appropriation of it to his or her own use and benefit.<sup>3</sup> Thus, to satisfy the adverse possession element of exclusivity, the claimant's conduct must afford an unequivocal indication that he or she is exercising dominion of a sole owner over the property.<sup>4</sup> Exclusive possession can be established by acts, which at the time, considering the state of the land, comport with ownership, that is, such acts as would ordinarily be exercised by an owner in appropriating the land to his or her own use and the exclusion of others.<sup>5</sup>

#### CUMULATIVE SUPPLEMENT

**Cases:**

"Exclusive possession and use," as elements of an adverse possession claim, means that the possessor is not sharing the disputed property with the true owner or public at large. [Harvey v. Furrow](#), 2014 ME 149, 107 A.3d 604 (Me. 2014).

**[END OF SUPPLEMENT]**

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

**Footnotes**

- 1 § 9.
- 2 [Brown v. Alabama Great Southern R. Co.](#), 544 So. 2d 926 (Ala. 1989); [Patterson v. Sharek](#), 924 A.2d 1005 (D.C. 2007); [Senez v. Collins](#), 182 Md. App. 300, 957 A.2d 1057 (2008); [Leonard v. Robinson](#), 276 S.W.3d 868 (Mo. Ct. App. E.D. 2009); [Hehnke v. Starr](#), 158 Neb. 575, 64 N.W.2d 68 (1954); [W. T. Carter & Bro. v. Holmes](#), 131 Tex. 365, 113 S.W.2d 1225 (Comm'n App. 1938).  
To establish the exclusivity element of adverse possession, the adverse possessor must alone care for or improve the disputed property as if it were his or her own. [Estate of Becker v. Murtagh](#), 19 N.Y.3d 75, 945 N.Y.S.2d 196, 968 N.E.2d 433 (2012).  
As to possession through another, see §§ 20, 21.
- 3 [Weyerhaeuser Co. v. Brantley](#), 510 F.3d 1256 (10th Cir. 2007) (applying Oklahoma law); [Family Land & Inv. Co. v. Williams](#), 273 Ala. 273, 138 So. 2d 696 (1961); [Henson v. Tucker](#), 278 Ga. App. 859, 630 S.E.2d 64 (2006); [Elliott v. West](#), 665 S.W.2d 683 (Mo. Ct. App. S.D. 1984); [W. T. Carter & Bro. v. Holmes](#), 131 Tex. 365, 113 S.W.2d 1225 (Comm'n App. 1938); [Pioneer Investment & Trust Co. v. Board of Education of Salt Lake City](#), 35 Utah 1, 99 P. 150 (1909).
- 4 [Greenwood v. Young](#), 80 So. 3d 140 (Miss. Ct. App. 2012).
- 5 [98 Lords Highway, LLC v. One Hundred Lords Highway, LLC](#), 138 Conn. App. 776, 54 A.3d 232 (2012).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 62

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### F. Exclusive Possession

## § 62. Absolute exclusivity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  34, 36

To constitute exclusive possession for purposes of establishing title to property by adverse possession, the claimant's possession need not be absolutely exclusive.<sup>1</sup> The possession need only be a type of possession that would characterize an owner's use of the property.<sup>2</sup> Thus, the claimant's use of the property need not be exclusive of all individuals.<sup>3</sup>

### CUMULATIVE SUPPLEMENT

#### Cases:

Continuity and exclusivity of possession, as required to establish title to real property by adverse possession, require that an adverse possessor's use of a disputed area rise to that level which would characterize an average owner's use of similar property. *Ka%7fUpulehu Land LLC v. Heirs and Assigns of Pahukula*, 136 Haw. 123, 358 P.3d 692 (2015).

### [END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> *Tenala, Ltd. v. Fowler*, 921 P.2d 1114 (Alaska 1996); *Smith v. Hayden*, 772 P.2d 47 (Colo. 1989); *Bowen v. Serksnas*, 121 Conn. App. 503, 997 A.2d 573 (2010); *Smith v. Tippet*, 569 A.2d 1186 (D.C. 1990); *Georgia Power Co. v. Irvin*, 267 Ga. 760, 482 S.E.2d 362 (1997); *Blickenstaff v. Bromley*, 243 Md. 164, 220 A.2d 558 (1966); *Thornburg v. Haecker*, 243 Neb. 693, 502 N.W.2d 434 (1993); *Hoffman v. Freeman Land and*

- 2 Timber, LLC., 329 Or. 554, 994 P.2d 106 (1999); *In re Rights-of-way and Easements Situate in Tp. of Mt. Pleasant*, 47 A.3d 166 (Pa. Commw. Ct. 2012), appeal denied, 63 A.3d 1250 (Pa. 2013).
- 2 Tenala, Ltd. v. Fowler, 921 P.2d 1114 (Alaska 1996); *Smith v. Hayden*, 772 P.2d 47 (Colo. 1989); *Bowen v. Serksnas*, 121 Conn. App. 503, 997 A.2d 573 (2010); *Smith v. Tippet*, 569 A.2d 1186 (D.C. 1990); *Georgia Power Co. v. Irvin*, 267 Ga. 760, 482 S.E.2d 362 (1997); *Blickenstaff v. Bromley*, 243 Md. 164, 220 A.2d 558 (1966); *Thornburg v. Haecker*, 243 Neb. 693, 502 N.W.2d 434 (1993); *Crown Credit Co., Ltd. v. Bushman*, 170 Ohio App. 3d 807, 2007-Ohio-1230, 869 N.E.2d 83 (3d Dist. Auglaize County 2007); *Hoffman v. Freeman Land and Timber, LLC.*, 329 Or. 554, 994 P.2d 106 (1999); *In re Rights-of-way and Easements Situate in Tp. of Mt. Pleasant*, 47 A.3d 166 (Pa. Commw. Ct. 2012), appeal denied, 63 A.3d 1250 (Pa. 2013).
- 3 *Franklin v. Massillon Homes II, L.L.C.*, 184 Ohio App. 3d 455, 2009-Ohio-5487, 921 N.E.2d 314 (5th Dist. Stark County 2009).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 63

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### F. Exclusive Possession

## § 63. Ouster of record owner

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  34, 37

In order for possession to be exclusive for purposes of adverse possession, the claimant must shut out<sup>1</sup> or wholly exclude the rightful owner from possession of the property during the required statutory period.<sup>2</sup> The claimant's possession, to be exclusive, must be such as to operate as an ouster of the owner of legal title.<sup>3</sup> Thus, a possession that does not amount to an ouster of the owner of land is not sufficiently exclusive to support adverse possession.<sup>4</sup>

#### Observation:

Sporadic use, temporary presence, or permissive visits by the record owner to the property will not defeat a claimant's exclusive possession for purposes of adverse possession.<sup>5</sup>

#### CUMULATIVE SUPPLEMENT



**Cases:**

Southern neighbor did not establish that he exercised control over parcel of land on border of northeastern landowner's property used as flower bed, and thus did not establish adverse possession of parcel, where neighbors both used property, and northeastern landowner had undermined southern neighbor's attempt to assert exclusive control of parcel through construction of shed on flower bed by notifying city, which had denied construction. [Presley v. McCain](#), 134 N.E.3d 464 (Ind. Ct. App. 2019).

**[END OF SUPPLEMENT]**

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

**Footnotes**

- 1 [Quatannens v. Tyrrell](#), 268 Va. 360, 601 S.E.2d 616 (2004).
- 2 [Davis Estates, L.L.C. v. Junge](#), 394 S.W.3d 436 (Mo. Ct. App. S.D. 2013); [Turner v. Mullins](#), 162 S.W.3d 356 (Tex. App. Fort Worth 2005).
- 3 [Davis v. Sponhauer](#), 574 N.E.2d 292 (Ind. Ct. App. 1991); [Gruebele v. Geringer](#), 2002 ND 38, 640 N.W.2d 454 (N.D. 2002).
- 4 [Carter v. Becton](#), 250 Ga. 617, 300 S.E.2d 152 (1983); [Collins v. Smith](#), 1962 OK 128, 372 P.2d 878 (Okla. 1962); [Adams v. Lamicq](#), 118 Utah 209, 221 P.2d 1037 (1950); [Wilson v. Braden](#), 56 W. Va. 372, 49 S.E. 409 (1904).
- As to the ouster of cotenants, see § 193.
- 5 [Nutting v. Reis](#), 326 S.W.3d 127 (Mo. Ct. App. S.D. 2010).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 64

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### F. Exclusive Possession

## § 64. Ouster of record owner—What constitutes ouster of record owner

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  34, 37

To constitute an ouster of the record owner in order to establish exclusive possession, for purposes of adverse possession, it is generally only necessary that the adverse claimant enter and take possession of the lands as if they were the claimant's own and with the intention of holding them to the exclusion of all others.<sup>1</sup> To effect an ouster by entry and occupation, the occupation must be of such nature and notoriety that the owner may be presumed to know that there is a possession of the land adverse to the owner's title.<sup>2</sup>

To amount to an ouster, it is not necessary that the claimant enter under color of title or either believe or assert a right to enter.<sup>3</sup> Indeed, setting up a mere claim or color of title is not sufficient to work an ouster.<sup>4</sup>

In determining what amounts to an ouster, that which is evidence of actual possession is also evidence of ouster.<sup>5</sup> One of the most effective means of proving an ouster is by showing the exercise of acts of dominion over the land by the adverse claimant.<sup>6</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> [Thomas v. Mrkonich](#), 247 Minn. 481, 78 N.W.2d 386 (1956).
- <sup>2</sup> [Tenala, Ltd. v. Fowler](#), 921 P.2d 1114 (Alaska 1996); [Town of Cavendish v. Barlow](#), 120 Vt. 161, 136 A.2d 352 (1957); [Leake v. Richardson](#), 199 Va. 967, 103 S.E.2d 227 (1958).
- <sup>3</sup> [Thomas v. Mrkonich](#), 247 Minn. 481, 78 N.W.2d 386 (1956).  
As to a claim of right, generally, see § 103.  
As to color of title, generally, see § 118.

- 4                    [Leake v. Richardson](#), 199 Va. 967, 103 S.E.2d 227 (1958).  
5                    [Hahn v. Keith](#), 170 Wis. 524, 174 N.W. 551 (1919).  
                      As to particular acts evidencing actual possession, generally, see § 25.  
6                    [O'Banion v. Simpson](#), 44 Nev. 188, 191 P. 1083 (1920).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 65

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### F. Exclusive Possession

## § 65. Effect of possession or use by two or more persons

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  35, 36

For purposes of a claim of adverse possession, there is no exclusive possession if the claimant merely shares dominion over the property with other users.<sup>1</sup> The exclusivity element of adverse possession requires that other people not make similar use of the land during the required statutory period.<sup>2</sup> Two or more persons cannot hold one tract of land adversely to each other at the same time,<sup>3</sup> and a mixed, shared, or scrambled possession is not exclusive and will not ripen into title.<sup>4</sup> If two or more persons are in possession of real estate, ordinarily, none has the exclusive possession necessary to establish adverse possession.<sup>5</sup>

The requisite of exclusive possession for acquisition of title by adverse possession is not satisfied if occupancy is shared with the owner or with agents or tenants of the owner.<sup>6</sup> Two or more persons may jointly claim and may jointly possess lands, however, without destroying the exclusive nature of their possession.<sup>7</sup>

#### Observation:

A trifling encroachment or trespass by an adjoining owner on land held adversely, removed or terminated at the request of the adverse claimant under recognition of his or her claim and title, is not sufficient basis for holding that the adverse claimant's possession has not been exclusive during the statutory period.<sup>8</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Skelly v. Brucher](#), 134 Conn. App. 337, 38 A.3d 261 (2012).
- 2 [Rushing v. Aldridge](#), 713 S.E.2d 566 (N.C. Ct. App. 2011).
- 3 [Weyerhaeuser Co. v. Brantley](#), 510 F.3d 1256 (10th Cir. 2007) (applying Oklahoma law); [Dzuris v. Kucharik](#), 164 Colo. 278, 434 P.2d 414 (1967); [Malone v. Smith](#), 355 Ill. App. 3d 812, 291 Ill. Dec. 572, 823 N.E.2d 1158 (4th Dist. 2005); [Ernest Realty Co. v. Hunter Co.](#), 189 La. 379, 179 So. 460 (1938); [Gilman v. McCrary](#), 97 N.M. 376, 640 P.2d 482 (1982); [Sneed v. Hamilton](#), 299 S.W.2d 769 (Tex. Civ. App. Beaumont 1957).  
With regard to a claim of adverse possession, neighboring landowners could not acquire joint adverse possession of a strip of land between their respective parcels where both parties had made use of the strip, thereby resulting in an absence of the required element of exclusivity. [Harrell v. Tilley](#), 201 Or. App. 464, 119 P.3d 251 (2005).
- 4 [Collins v. Smith](#), 1962 OK 128, 372 P.2d 878 (Okla. 1962).  
Joint use is not enough to constitute adverse possession because the possession must be of such character as to indicate unmistakably an assertion of a claim of exclusive ownership in the occupant. [Tran v. Macha](#), 213 S.W.3d 913 (Tex. 2006).
- 5 [Eason v. Samson Lodge No. 624, A.F. & A.M.](#), 270 Ala. 194, 117 So. 2d 138 (1959); [Gadd v. Stone](#), 459 So. 2d 773 (Miss. 1984); [Cofer v. Kuhlmann](#), 214 Neb. 341, 333 N.W.2d 905 (1983); [Humphreys v. Gribble](#), 227 S.W.2d 235 (Tex. Civ. App. Waco 1950), writ refused n.r.e., (Apr. 19, 1950); [Sowerwine v. Nielson](#), 671 P.2d 295 (Wyo. 1983).
- 6 [Crone v. Nuss](#), 46 Kan. App. 2d 436, 263 P.3d 809 (2011), review denied, (June 13, 2012); [Irving Pulp & Paper Ltd. v. Kelly](#), 654 A.2d 416 (Me. 1995); [Wanha v. Long](#), 255 Neb. 849, 587 N.W.2d 531 (1998); [Rick v. Grubbs](#), 147 Tex. 267, 214 S.W.2d 925 (1948).  
Possession concurrent with that of the true owner is not exclusive possession for adverse possession purposes. [Jonkers v. Summit Twp.](#), 278 Mich. App. 263, 747 N.W.2d 901 (2008).
- 7 [Anzaldua v. Richardson](#), 287 S.W.2d 299 (Tex. Civ. App. San Antonio 1956), writ refused n.r.e.; [Bank of Vernal v. Uintah County](#), 122 Utah 410, 250 P.2d 581 (1952).
- 8 [Pueblo of Santa Ana v. Baca](#), 844 F.2d 708 (10th Cir. 1988) (applying New Mexico law); [Smith v. Hayden](#), 772 P.2d 47 (Colo. 1989); [City of Rock Springs v. Sturm](#), 39 Wyo. 494, 273 P. 908, 97 A.L.R. 1 (1929).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 66

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### F. Exclusive Possession

## § 66. Effect of use by claimant and the public

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  34, 35

#### A.L.R. Library

[Use of property by public as affecting acquisition of title by adverse possession, 56 A.L.R.3d 1182](#)

As a general rule, any use of premises by the public that indicates a claim of common or public right will prevent the acquisition of title by adverse possession of the premises by any person because if there is such use, the possession is not exclusive.<sup>1</sup> In other words, a claimant's occupation of property in common with the public,<sup>2</sup> or use of property in connection with the public, is not exclusive possession for adverse possession purposes.<sup>3</sup> This rule does not apply, however, if the use and occupation by the claimant and the public are not common uses.<sup>4</sup> The permissive use of land by the public also does not affect the acquisition of title by adverse possession because such permissive use acknowledges the possession of the person holding the land and is subordinate to that possession.<sup>5</sup> The same is true of casual use by the public.<sup>6</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- 1 [Roche v. Town of Fairfield, 186 Conn. 490, 442 A.2d 911 \(1982\); Striefel v. Charles-Keyt-Leaman Partnership, 1999 ME 111, 733 A.2d 984 \(Me. 1999\); Johnston v. City of Albuquerque, 12 N.M. 20, 72 P.](#)

9 (1903); *Pirman v. Confer*, 273 N.Y. 357, 7 N.E.2d 262, 111 A.L.R. 216 (1937); *Kelley v. Salvat*, 146 Wis. 543, 131 N.W. 436 (1911).

Because some 500 hunters used an island and the defendant only used it for recreational purposes, the defendant could not claim adverse possession. *Winkle v. Mitera*, 195 Neb. 821, 241 N.W.2d 329 (1976).

2 *Jonkers v. Summit Twp.*, 278 Mich. App. 263, 747 N.W.2d 901 (2008).

3 *Estate of Becker v. Murtagh*, 19 N.Y.3d 75, 945 N.Y.S.2d 196, 968 N.E.2d 433 (2012).

4 *Bensdorff v. Uihlein*, 132 Tenn. 193, 177 S.W. 481, 2 A.L.R. 1364 (1915).

The fact that trespassers may occasionally have hunted or fished on the property without permission was not sufficient to interrupt the adverse possession of disputed property by a claimant who farmed the property.

*Nennemann v. Rebuck*, 242 Neb. 604, 496 N.W.2d 467 (1993).

5 *Bensdorff v. Uihlein*, 132 Tenn. 193, 177 S.W. 481, 2 A.L.R. 1364 (1915).

6 *Anderson v. Cold Spring Tungsten, Inc.*, 170 Colo. 7, 458 P.2d 756 (1969); *Stark v. Stanhope*, 206 Kan. 428, 480 P.2d 72, 56 A.L.R.3d 1172 (1971).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession II G Refs.

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### G. Continuity of Possession

[Topic Summary](#) | [Correlation Table](#)

## Research References

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  43(1) to 53, 55

#### A.L.R. Library

A.L.R. Index, Adverse Possession

West's A.L.R. Digest, [Adverse Possession](#)  43(1) to 53, 55

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.



## 3 Am. Jur. 2d Adverse Possession § 67

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### G. Continuity of Possession

##### 1. In General

## § 67. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  44

One of the requisites of adverse possession is that the possession of property by the adverse claimant must be continuous for the full prescribed statutory period.<sup>1</sup> The claimant must satisfy each element necessary for adverse possession continuously for the required period of time,<sup>2</sup> or title to the property cannot be acquired.<sup>3</sup> The moment the possession is broken, it ceases to be effectual because as soon as, and as often as, a break occurs, the law restores the constructive possession of the owner.<sup>4</sup>

Although the time period required for adverse possession must be consecutive, it need not be the prescribed number of years immediately preceding the filing of the claim.<sup>5</sup>

### CUMULATIVE SUPPLEMENT

#### Cases:

Adverse claimant failed to establish that he, or his predecessors-in-interest, had actual, visible, and continuous possession of disputed property for required period of time, and thus, district court, in a bench trial, properly found adjacent property owners were the legal owners of the disputed property; claimant did not present any evidence that his predecessors-in-interest excluded adjacent property owners' predecessors-in-interest from disputed property or that their possession was hostile, and there was evidence that adjacent property owners had paid property taxes on the disputed property for more than ten years. [NDCC 28–01–08, 28–01–10, 47–06–03. Moody v. Sundley, 2015 ND 204, 868 N.W.2d 491 \(N.D. 2015\).](#)

**[END OF SUPPLEMENT]**

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1                   § 9.
- 2                   Roberts v. Feitz, 933 N.E.2d 466 (Ind. Ct. App. 2010); Dumproff v. Driskill, 376 S.W.3d 680 (Mo. Ct. App. S.D. 2012), reh'g and/or transfer denied, (Apr. 19, 2012).  
As to the required elements of adverse possession, see § 9.
- 3                   Dugan v. Jensen, 244 Neb. 937, 510 N.W.2d 313 (1994).
- 4                   McBeth v. Wetnight, 57 Ind. App. 47, 106 N.E. 407 (1914); Hernandez v. Reed, 2010 OK CIV APP 65, 239 P.3d 186 (Div. 3 2010); Atlantic Coast Line R. Co. v. Baker, 143 S.C. 445, 141 S.E. 688 (1927); Wilson v. Braden, 56 W. Va. 372, 49 S.E. 409 (1904).  
As to the interruption of possession, see §§ 80 to 102.
- 5                   Dumproff v. Driskill, 376 S.W.3d 680 (Mo. Ct. App. S.D. 2012), reh'g and/or transfer denied, (Apr. 19, 2012).  
As to the rule that, after expiration of the statutory period, the adverse claimant has a vested right or title that is not lost by cessation of occupancy of the land, see § 238.

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 68

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### G. Continuity of Possession

##### 1. In General

## § 68. What constitutes continuity of possession

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  44

The term "continuous," in the context of adverse possession, means a possession for the prescribed statutory period that is uninterrupted or stretches on without a break<sup>1</sup> or a possession for the statutory period that is uninterrupted and without lapse.<sup>2</sup> Continuous possession, however, need not be constant<sup>3</sup> or unceasing in order to support an adverse possession claim.<sup>4</sup> In order to acquire title by adverse possession, the law does not require that the claimant be actually on the land during the whole of the prescribed statutory period,<sup>5</sup> or remain continuously on the land, and perform acts of ownership from day to day on it.<sup>6</sup> Daily or weekly use of the property therefore is generally not required to establish continuous use for purposes of adverse possession as long as the use is continuous enough to indicate prolonged and substantial use.<sup>7</sup>

The continuity of possession required for adverse possession must be sufficient to signal to the true owner that a claim of title contrary to his or her own is being asserted.<sup>8</sup> To show continuity of possession, it therefore is necessary that, during the whole time required, there should be something to give notice that another is doing such acts or holding out such signs as to indicate the existence of a possession adverse to the true owner.<sup>9</sup>

Continuous possession or use, for purposes of adverse possession, depends on the character or kind of land involved<sup>10</sup> and requires only the kind and degree of occupancy, or use and enjoyment, for the statutory period that an average owner would make of the property.<sup>11</sup> The important consideration is whether the physical use of the property by the claimant, the erection of structures, or the keeping of personal property on such property demonstrates that the claimant is asserting dominion over the property.<sup>12</sup> To be continuous, the evidence must warrant the inference that actual use and occupation has extended over the required period and that during it, the claimant has, from time to time, continuously subjected the land to its susceptible

use.<sup>13</sup> Continuous possession is satisfied with repeated acts that are consistent with the acts of possession of an owner of such a property.<sup>14</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Although a wooded area need not be completely cleared before the statutory 20-year adverse possession period begins to run, it is only necessary that a continuous clearing takes place and that the land then be used for other suitable purposes; the possession need not be unceasing, but the evidence should be such as to warrant the inference that the actual use and occupation have extended over the required period. [NDCC § 28-01-10](#). [Larson v. Tonneson](#), 2019 ND 230, 933 N.W.2d 84 (N.D. 2019).

Although a foreclosure action against the property owned by the plaintiff's predecessor-in-interest does not, as a matter of law, break the continuity of adverse possession period, the plaintiff must nevertheless demonstrate that the predecessor's usage was continuous, in order to prove the adverse possession claim. [Parker v. Potter](#), 2014 VT 109, 109 A.3d 406 (Vt. 2014).

## [END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- 1 [Striefel v. Charles-Keyt-Leaman Partnership](#), 1999 ME 111, 733 A.2d 984 (Me. 1999); [Wanha v. Long](#), 255 Neb. 849, 587 N.W.2d 531 (1998).
- 2 [Bowles v. McKeon](#), 217 S.W.3d 400 (Mo. Ct. App. S.D. 2007).
- 3 [Stickler v. Halevy](#), 794 F. Supp. 2d 385 (E.D. N.Y. 2011) (applying New York law); [Maune v. Beste](#), 356 S.W.3d 225 (Mo. Ct. App. E.D. 2011), reh'g and/or transfer denied, (Dec. 12, 2011) and transfer denied, (Jan. 31, 2012).
- 4 [McManus v. Kluttz](#), 165 N.C. App. 564, 599 S.E.2d 438 (2004).
- 5 [Jones v. Leagan](#), 384 S.C. 1, 681 S.E.2d 6 (Ct. App. 2009).  
The continuity of possession required for adverse possession may be shown even though there are slight intervals in which the adverse possessor or his or her agent is not actually upon the land, or there are short intervals of temporary absence of such persons. [Henson v. Tucker](#), 278 Ga. App. 859, 630 S.E.2d 64 (2006).
- 6 [Limbaugh v. Richardson](#), 402 So. 2d 957 (Ala. 1981); [Jones v. Schmidt](#), 170 Neb. 351, 102 N.W.2d 640 (1960); [Ray v. Beacon Hudson Mountain Corp.](#), 88 N.Y.2d 154, 643 N.Y.S.2d 939, 666 N.E.2d 532 (1996).
- 7 [Bullion v. Gahm](#), 164 Ohio App. 3d 344, 2005-Ohio-5966, 842 N.E.2d 540 (4th Dist. Scioto County 2005).
- 8 [Anthony v. Searle](#), 681 A.2d 892 (R.I. 1996).
- 9 [Henson v. Tucker](#), 278 Ga. App. 859, 630 S.E.2d 64 (2006).
- 10 [Vezey v. Green](#), 35 P.3d 14 (Alaska 2001); [Pellham v. Skeans](#), 232 Or. App. 294, 222 P.3d 43 (2009).
- 11 [Vezey v. Green](#), 35 P.3d 14 (Alaska 2001); [Striefel v. Charles-Keyt-Leaman Partnership](#), 1999 ME 111, 733 A.2d 984 (Me. 1999).
- 12 [Thompson v. Ratcliff](#), 245 S.W.2d 592 (Ky. 1952).
- 13 [McManus v. Kluttz](#), 165 N.C. App. 564, 599 S.E.2d 438 (2004).
- 14 [Stickler v. Halevy](#), 794 F. Supp. 2d 385 (E.D. N.Y. 2011) (applying New York law).

### 3 Am. Jur. 2d Adverse Possession § 69

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### G. Continuity of Possession

##### 1. In General

## § 69. What constitutes continuity of possession—Occasional acts; seasonal activities

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  44 to 46.1

#### A.L.R. Library

[Adverse possession: sufficiency, as regards continuity, of seasonal possession other than for agricultural or logging purposes, 24 A.L.R.2d 632](#)

Occasional and sporadic acts of dominion are generally insufficient to constitute a continuous possession of property for purposes of adverse possession even if they are extended over the prescribed statutory period.<sup>1</sup> A claimant's periodic activities on land that are consistent with the character of the land throughout the possessory period, however, may be sufficiently continuous to support a claim of adverse possession.<sup>2</sup>

The requirement of continuity of possession is satisfied by activities that are seasonal in character where the use of land is commensurate with and appropriate to existing seasonal uses, needs, requirements, and limitations, having regard for the location and adaptability of the land.<sup>3</sup> For example, the regular use of property as a summer home and for recreation purposes during summers can be continuous for a claim of adverse possession.<sup>4</sup> Continuous use or possession therefore may be established notwithstanding seasonal breaks from the use of the property.<sup>5</sup> Thus, woodlands that are usually occupied only during periods of

harvesting timber may be subject to continuous possession within legal contemplation over periods of time during the intervals between cuttings.<sup>6</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Hagan v. Crowley](#), 265 Ala. 291, 90 So. 2d 760 (1956); [Ennis v. Stanley](#), 346 Mich. 296, 78 N.W.2d 114 (1956); [Norman v. Smedley](#), 1961 OK 143, 363 P.2d 839 (Okla. 1961); [Westover Volunteer Fire Dept. v. Barker](#), 142 W. Va. 404, 95 S.E.2d 807 (1956).  
The evidence failed to establish adverse possession because the claimant and the claimant's predecessor in interest had made only infrequent visits to the property to pick and gather fruits, thus precluding a finding of continuous possession. [Okuna v. Nakahuna](#), 60 Haw. 650, 594 P.2d 128 (1979).
- 2 [Fraleay v. Minger](#), 829 N.E.2d 476 (Ind. 2005).
- 3 [Thompson v. Morris](#), 218 Ark. 542, 237 S.W.2d 473, 24 A.L.R.2d 627 (1951); [Roche v. Town of Fairfield](#), 186 Conn. 490, 442 A.2d 911 (1982); [Lee v. Raymond](#), 456 A.2d 1179 (R.I. 1983); [Burkhardt v. Smith](#), 17 Wis. 2d 132, 115 N.W.2d 540 (1962).  
A town acquired title to a beach by adverse possession because for the requisite period, it maintained the area as a public beach on a daily basis from Memorial Day to Labor Day and on weekends in September. [Roche v. Town of Fairfield](#), 186 Conn. 490, 442 A.2d 911 (1982).
- 4 [Kay v. Biggs](#), 13 Ariz. App. 172, 475 P.2d 1 (Div. 1 1970); [Mahoney v. Heebner](#), 343 Mass. 770, 178 N.E.2d 26 (1961); [Nechtow v. Brown](#), 369 Mich. 460, 120 N.W.2d 251 (1963); [Lee v. Raymond](#), 456 A.2d 1179 (R.I. 1983); [Burkhardt v. Smith](#), 17 Wis. 2d 132, 115 N.W.2d 540 (1962).
- 5 [Manderscheid v. Dutton](#), 193 Or. App. 9, 88 P.3d 281 (2004) (land permitted pasturing only in spring or summer).
- 6 [Amey v. Hall](#), 123 Vt. 62, 181 A.2d 69 (1962).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 70

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### G. Continuity of Possession

##### 2. Tacking of Successive Possessions

##### a. In General

## § 70. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  43(1)

#### Forms

Forms relating to tacking: see Am. Jur. Pleading and Practice Forms, Adverse Possession [\[Westlaw® Search Query\]](#)

To come within the requirements as to continuity of possession, it is not necessary that an adverse possession be maintained for the statutory period by one person.<sup>1</sup> Continuity may be just as effectively shown by the successive possessions of several persons between whom the requisite privity exists<sup>2</sup> in a process called "tacking."<sup>3</sup>

The doctrine of "tacking" is one that permits an adverse possessor to add his or her period of possession to that of a prior adverse possessor to establish continuous possession for the required statutory period.<sup>4</sup> A claimant, in other words, may tack his or her period of adverse possession with that of his or her predecessors in order to meet the applicable statutory period to confer title by adverse possession.<sup>5</sup> If the successive possessions of those in privity with each other, when tacked together, constitute one continuous adverse possession for the statutory period, it will be sufficient<sup>6</sup> provided the other elements of adverse possession are also present<sup>7</sup> during the time to which the claimant wishes to tack.<sup>8</sup>

**Observation:**

It is not necessary to a continuity of possession that the new occupant be personally present on the premises before the former occupant departs or that there be a formal, manual transfer of possession as long as the possessory periods connect or overlap.<sup>9</sup>

**Caution:**

In some jurisdictions, a claim by adverse possession cannot prevail by tacking on possession by predecessors in title to the claimant.<sup>10</sup> In other jurisdictions, tacking is allowed only between ancestor and heir<sup>11</sup> or only if the change in possession occurs by operation of law.<sup>12</sup> Further, if the applicable statute requires the payment of taxes on land before title may be acquired by adverse possession, a prior possession cannot be tacked onto a present possession to make out the statutory period unless the prior possessor paid the taxes.<sup>13</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Assuming that royalty interests could be adversely possessed under Texas law, grantor could not invoke the statute of limitations for adverse possession claims to defeat the title he validly created when he conveyed his royalty interests from minerals associated with mineral estate to grantee pursuant to deed. [V.T.C.A., Civil Practice & Remedies Code §§ 16.021\(1\), 16.024. Huggins v. Royalty Clearinghouse, Ltd., 121 F. Supp. 3d 646 \(W.D. Tex. 2015\).](#)

### [END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- 1 [Steinichen v. Stancil, 284 Ga. 580, 669 S.E.2d 109 \(2008\); Shingleton v. North Carolina Wildlife Resources Commission, 248 N.C. 89, 102 S.E.2d 402 \(1958\); Boerschig v. Southwestern Holdings, Inc., 322 S.W.3d 752 \(Tex. App. El Paso 2010\).](#)
- 2 [Steinichen v. Stancil, 284 Ga. 580, 669 S.E.2d 109 \(2008\); Cooper v. Tarpley, 112 Ind. App. 1, 41 N.E.2d 640 \(1942\); Howard v. Mitchell, 268 Ky. 429, 105 S.W.2d 128 \(1936\); Fredericksen v. Henke, 167 Minn. 356, 209 N.W. 257, 46 A.L.R. 785 \(1926\); Worm v. Crowell, 165 Neb. 713, 87 N.W.2d 384 \(1958\); Shingleton v. North Carolina Wildlife Resources Commission, 248 N.C. 89, 102 S.E.2d 402 \(1958\); Buckner v. Russell,](#)



1958 OK 237, 331 P.2d 401 (Okla. 1958); *Faulconer v. Williams*, 327 Or. 381, 964 P.2d 246 (1998); *Stark v. Lardin*, 133 Pa. Super. 96, 1 A.2d 784 (1938); *Carnevale v. Dupee*, 783 A.2d 404 (R.I. 2001).

As to the necessity of privity, see § 72.

3 Akbar Self Help Inc. v. City of New York, 24 Misc. 3d 243, 874 N.Y.S.2d 887 (Sup 2009).

4 Bohanon v. Edwards, 970 So. 2d 777 (Ala. Civ. App. 2007); *Hubbard v. Curtiss*, 684 P.2d 842 (Alaska 1984); *Skelly v. Brucher*, 134 Conn. App. 337, 38 A.3d 261 (2012); *Bartlett v. Calhoun*, 412 So. 2d 597 (La. 1982); *Worm v. Crowell*, 165 Neb. 713, 87 N.W.2d 384 (1958); *Fagan v. Grady*, 101 N.H. 18, 131 A.2d 441 (1957); *Oliphant v. Dalton*, 1956 OK 316, 304 P.2d 300 (Okla. 1956); *Estate of Billings v. Deadwood Congregation of Jehovah Witnesses*, 506 N.W.2d 138 (S.D. 1993); *Salt Lake City v. Silver Fork Pipeline Corp.*, 2000 UT 3, 5 P.3d 1206 (Utah 2000); *Scott v. Burwell's Bay Imp. Ass'n*, 281 Va. 704, 708 S.E.2d 858 (2011); *Meyer v. Ellis*, 411 P.2d 338 (Wyo. 1966).

5 *Watson v. Mense*, 298 S.W.3d 521 (Mo. 2009); *Stroem v. Plackis*, 96 A.D.3d 1040, 948 N.Y.S.2d 90 (2d Dep't 2012).

6 *Waller v. Dansby*, 145 Ark. 306, 224 S.W. 615 (1920); *Territory v. Pai-a*, 34 Haw. 722, 1938 WL 6825 (1938); *Smith v. Brown*, 126 Ind. App. 545, 134 N.E.2d 823 (1956); *Akbar Self Help Inc. v. City of New York*, 24 Misc. 3d 243, 874 N.Y.S.2d 887 (Sup 2009); *Shingleton v. North Carolina Wildlife Resources Commission*, 248 N.C. 89, 102 S.E.2d 402 (1958); *Ellis v. Williams*, 1956 OK 163, 297 P.2d 916 (Okla. 1956); *Baylor v. Soska*, 540 Pa. 435, 658 A.2d 743 (1995); *Sutton v. Clark*, 59 S.C. 440, 38 S.E. 150 (1901).

7 *Emmer v. Rector*, 175 La. 82, 143 So. 11 (1932); *Akbar Self Help Inc. v. City of New York*, 24 Misc. 3d 243, 874 N.Y.S.2d 887 (Sup 2009); *Dale v. Stringer*, 570 S.W.2d 414 (Tex. Civ. App. Texarkana 1978), writ refused n.r.e., (Dec. 13, 1978).

8 *Dumproff v. Driskill*, 376 S.W.3d 680 (Mo. Ct. App. S.D. 2012), reh'g and/or transfer denied, (Apr. 19, 2012).

9 *Shoer v. Daffe*, 337 Mass. 420, 149 N.E.2d 625 (1958).

10 *Cochran v. Milligan*, 359 Mich. 148, 101 N.W.2d 292 (1960).

11 *Jones v. Leagan*, 384 S.C. 1, 681 S.E.2d 6 (Ct. App. 2009).

12 *Catawba Indian Tribe of South Carolina v. State of S.C.*, 978 F.2d 1334 (4th Cir. 1992) (applying South Carolina law).

13 *Judd v. Meoska*, 76 S.D. 537, 82 N.W.2d 283 (1957).

As to statutory requirements for payment of taxes, generally, see § 136.

### 3 Am. Jur. 2d Adverse Possession § 71

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### G. Continuity of Possession

##### 2. Tacking of Successive Possessions

##### a. In General

## § 71. Necessity of adverse holding by predecessor

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  [43\(1\)](#), [43\(2\)](#)

A claimant cannot tack or link his or her possession of property with that of other persons to support the claim of adverse possession in the absence of proof of an adverse holding and occupancy on the part of the predecessor.<sup>1</sup> The evidence must show that the prior occupants were asserting the same claims to possession of the property in question.<sup>2</sup> Evidence that the predecessor intended to transfer whatever adverse possessory rights he or she may have acquired in the property is proof of such an adverse holding on the part of the predecessor so that a claimant may tack his or her possessory interests to those of a predecessor.<sup>3</sup> If it is shown that a predecessor in title held the land by permission<sup>4</sup> or had abandoned every intention of holding it adversely, however, the predecessor's possession cannot be tacked onto that of the successor.<sup>5</sup>

#### CUMULATIVE SUPPLEMENT

##### Cases:

Disputed portion of land parcel was continuously used by owner and prior owners of neighboring parcel, as required as an element of claim to own disputed portion by adverse possession, where prior owners of neighboring parcel built a stone wall, built a fire pit, and drilled a well on the disputed portion, one of the former owners of the neighboring parcel paid waterfront taxes for the disputed portion, and current owners of neighboring parcel used disputed portion by parking a mobile home trailer and picnic table on it, having its lawn mowed, and using its water well and shore. [Benson v. Feland Brothers Properties](#), 2018 ND 29, 906 N.W.2d 98 (N.D. 2018).

**[END OF SUPPLEMENT]**

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 Archuleta v. Rose, 136 Colo. 211, 315 P.2d 201 (1957); Marquis v. Drost, 155 Conn. 327, 231 A.2d 527 (1967); Kinder v. Ramey, 267 Ky. 312, 102 S.W.2d 32 (1937); Maas v. Platte Val. Public Power and Irr. Dist., 167 Neb. 124, 91 N.W.2d 409 (1958); McGee v. Stokes' Heirs at Law, 76 N.W.2d 145 (N.D. 1956); Norman v. Smedley, 1961 OK 143, 363 P.2d 839 (Okla. 1961); Ellis v. Jansing, 620 S.W.2d 569 (Tex. 1981); Laird Properties New England Land Syndicate v. Mad River Corp., 131 Vt. 268, 305 A.2d 562 (1973); Scott v. Burwell's Bay Imp. Ass'n, 281 Va. 704, 708 S.E.2d 858 (2011); Perpignani v. Vonasek, 139 Wis. 2d 695, 408 N.W.2d 1 (1987).
- 2 Scott v. Burwell's Bay Imp. Ass'n, 281 Va. 704, 708 S.E.2d 858 (2011).
- 3 Tieu v. Morgan, 246 Or. App. 364, 265 P.3d 98 (2011).
- 4 St. Louis Union Trust Co. v. Smith, 207 Ark. 815, 182 S.W.2d 945 (1944); Scott v. Burwell's Bay Imp. Ass'n, 281 Va. 704, 708 S.E.2d 858 (2011).  
As to permissive possession, see §§ 44 to 49.
- 5 St. Louis Union Trust Co. v. Smith, 207 Ark. 815, 182 S.W.2d 945 (1944).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 72

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### G. Continuity of Possession

##### 2. Tacking of Successive Possessions

##### a. In General

## § 72. Necessity of privity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  43(3)

#### Forms

Forms relating to tacking: see Am. Jur. Pleading and Practice Forms, Adverse Possession [\[Westlaw® Search Query\]](#)

To tack one person's possession to that of another for purposes of adverse possession, a nexus or privity between the successive claimants is necessary.<sup>1</sup> Thus, successive possessions cannot be tacked for the purpose of showing a continuous adverse possession in the absence of privity of estate or a connection between the successive occupants.<sup>2</sup>

The requirement of privity is based on the theory that the several occupancies must be so connected that each occupant can go back to the original entry or holding as a source of title; the successive occupants must claim through and under their predecessors, and not independently, to make a continuous holding united into one ground of action.<sup>3</sup>

**Observation:**

The required privity is that of possession, and it is the transfer of possession, and not title, that is the essential element.<sup>4</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Strickland v. Markos](#), 566 So. 2d 229 (Ala. 1990); [Sorensen v. Costa](#), 32 Cal. 2d 453, 196 P.2d 900 (1948); [Steinichen v. Stancil](#), 284 Ga. 580, 669 S.E.2d 109 (2008); [Senez v. Collins](#), 182 Md. App. 300, 957 A.2d 1057 (2008); [Hill v. Johnson](#), 27 So. 3d 426 (Miss. Ct. App. 2009); [Maas v. Platte Val. Public Power and Irr. Dist.](#), 167 Neb. 124, 91 N.W.2d 409 (1958); [Evans v. Hogue](#), 296 Or. 745, 681 P.2d 1133 (1984); [Croyle v. Dellape](#), 2003 PA Super 328, 832 A.2d 466 (2003); [Boerschig v. Southwestern Holdings, Inc.](#), 322 S.W.3d 752 (Tex. App. El Paso 2010); [Perpignani v. Vonasek](#), 139 Wis. 2d 695, 408 N.W.2d 1 (1987).  
Tacking is permitted as long as there is an unbroken chain of privity between the adverse possessors. [Akbar Self Help Inc. v. City of New York](#), 24 Misc. 3d 243, 874 N.Y.S.2d 887 (Sup 2009).
- 2 [Marvel v. Barley Mill Road Homes](#), 34 Del. Ch. 417, 104 A.2d 908 (1954); [Merritt v. Smith](#), 35 So. 2d 817 (La. Ct. App. 2d Cir. 1948); [Wishart v. McKnight](#), 178 Mass. 356, 59 N.E. 1028 (1901); [Burns v. Crump](#), 245 N.C. 360, 95 S.E.2d 906 (1957).
- 3 [Sorensen v. Costa](#), 32 Cal. 2d 453, 196 P.2d 900 (1948); [Maas v. Platte Val. Public Power and Irr. Dist.](#), 167 Neb. 124, 91 N.W.2d 409 (1958).
- 4 [Newkirk v. Porter](#), 237 N.C. 115, 74 S.E.2d 235 (1953); [Dale v. Stringer](#), 570 S.W.2d 414 (Tex. Civ. App. Texarkana 1978), writ refused n.r.e., (Dec. 13, 1978); [Brown v. Gobble](#), 196 W. Va. 559, 474 S.E.2d 489 (1996).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 73

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### G. Continuity of Possession

##### 2. Tacking of Successive Possessions

##### a. In General

## § 73. What constitutes privity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  43(3)

Privity, which is necessary for tacking one person's possession of property to that of another for purposes of adverse possession,<sup>1</sup> refers to a succession of relationship to the same thing, whether created by deed or by other act or by operation of law.<sup>2</sup> The privity necessary to support the tacking of successive possessions of property may be based on any connecting relationship that will prevent a breach in the adverse possession and connect the several possessions to the original entry.<sup>3</sup> Thus, if one adverse claimant, by agreement, surrenders possession to another, and the acts of the parties are such that the two possessions actually connect, leaving no interval for the constructive possession of the true owner to intervene, the two possessions are blended into one, and the running of the limitation period on the right of the true owner to reclaim the land is continued.<sup>4</sup>

The privity required to establish continuity of adverse possession may be effected by any conveyance or agreement, written or verbal, which has for its object a transfer of the rights acquired under the original entry.<sup>5</sup> A transfer of possession alone, without written evidence of the transfer, thus is sufficient to create privity.<sup>6</sup> Evidence of successive occupancies, however, does not establish privity but only shows a succession of independent trespasses, one not necessarily supporting the other.<sup>7</sup>

#### CUMULATIVE SUPPLEMENT

#### Cases:

Homeowners in subdivision lot, who were in adverse possession of adjacent waterfront parcel, lacked privity with their predecessor, who had cleared and landscaped the parcel and built a boat pier on it, as required to tack their respective years of possession to count toward state's twenty year prescriptive period; deed in which predecessor transferred the homeowners' lot to them did not convey any possessory interest in adjacent parcel, and homeowners did not inquire about any such interest. *N.C. Gen. Stat. Ann. § 1-40. Cole v. Bonaparte's Retreat Property Owners' Association, Inc.*, 815 S.E.2d 403 (N.C. Ct. App. 2018).

**[END OF SUPPLEMENT]**

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 § 72.
- 2 *Sorensen v. Costa*, 32 Cal. 2d 453, 196 P.2d 900 (1948); *Blalock v. Redwine*, 191 Ga. 169, 12 S.E.2d 639 (1940); *Smith v. Brown*, 126 Ind. App. 545, 134 N.E.2d 823 (1956); *Marks v. Zimmerman Farms, LLC*, 13 So. 3d 768 (La. Ct. App. 2d Cir. 2009); *Croyle v. Dellape*, 2003 PA Super 328, 832 A.2d 466 (2003).
- 3 *Sorensen v. Costa*, 32 Cal. 2d 453, 196 P.2d 900 (1948).  
As to the interruption of possession, see §§ 80 to 102.
- 4 *Sattler v. Pellichino*, 71 So. 2d 689 (La. Ct. App. 1st Cir. 1954); *Morgan v. Jenson*, 47 N.D. 137, 181 N.W. 89 (1921); *Harris v. Grayson*, 1930 OK 546, 146 Okla. 291, 294 P. 187 (1930).
- 5 *Withers v. Burton*, 268 Ala. 365, 106 So. 2d 876 (1958); *Marvel v. Barley Mill Road Homes*, 34 Del. Ch. 417, 104 A.2d 908 (1954); *Blalock v. Redwine*, 191 Ga. 169, 12 S.E.2d 639 (1940); *Viking Refrigerator & Mfg. Co. v. Crawford*, 84 Kan. 203, 114 P. 240 (1911); *Arduino v. City of Detroit*, 249 Mich. 382, 228 N.W. 694 (1930); *Harris v. Grayson*, 1930 OK 546, 146 Okla. 291, 294 P. 187 (1930); *Evans v. Hogue*, 296 Or. 745, 681 P.2d 1133 (1984).
- 6 *Withers v. Burton*, 268 Ala. 365, 106 So. 2d 876 (1958).
- 7 *Maas v. Platte Val. Public Power and Irr. Dist.*, 167 Neb. 124, 91 N.W.2d 409 (1958).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 74

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### G. Continuity of Possession

##### 2. Tacking of Successive Possessions

##### a. In General

## § 74. Between whom privity of possession exists

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  43(3) to 43(8)

All that is necessary for privity between successive occupants of property, to allow an adverse possessor to add his or her period of possession to that of a prior adverse possessor to establish continuous possession for the prescribed statutory period, is that one receive possession from the other by some act of such other or by operation of law.<sup>1</sup> Privity thus may exist between:

- the promoters or officers of a corporation and the corporation.<sup>2</sup>
- a mortgagee and a mortgagor.<sup>3</sup>
- a landlord and a tenant.<sup>4</sup>
- a landlord's grantee and a tenant.<sup>5</sup>
- members of a family.<sup>6</sup>
- a deceased spouse and a surviving spouse.<sup>7</sup>
- a tenant for life or years and the holder of the remainder or reversion.<sup>8</sup>
- a seller and a purchaser.<sup>9</sup>



— a grantor and a grantee.<sup>10</sup>

— a decedent and his or her heirs.<sup>11</sup>

— a decedent and the representative of the estate.<sup>12</sup>

— a testator and a devisee.<sup>13</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- 1 § 73.
- 2 *Blalock v. Redwine*, 191 Ga. 169, 12 S.E.2d 639 (1940).
- 3 *Strickland v. Markos*, 566 So. 2d 229 (Ala. 1990).
- 4 *Powers v. Malavazos*, 25 Ohio App. 450, 6 Ohio L. Abs. 62, 158 N.E. 654 (4th Dist. Scioto County 1927).
- 5 *Shoer v. Daffe*, 337 Mass. 420, 149 N.E.2d 625 (1958).
- 6 *Shaffer v. Baylor's Lake Ass'n*, 392 Pa. 493, 141 A.2d 583 (1958).
- 7 *Souleyette v. McKee*, 296 Ky. 868, 178 S.W.2d 833 (1944).
- 8 *Whittington v. Cameron*, 385 Ill. 99, 52 N.E.2d 134, 150 A.L.R. 551 (1943); *Charles v. Pickens*, 214 Mo. 212, 112 S.W. 551 (1908).
- 9 *Fredericksen v. Henke*, 167 Minn. 356, 209 N.W. 257, 46 A.L.R. 785 (1926).
- 10 *Page v. Downs*, 115 N.H. 373, 341 A.2d 767 (1975); *Newkirk v. Porter*, 237 N.C. 115, 74 S.E.2d 235 (1953).
- 11 *Catawba Indian Tribe of South Carolina v. State of S.C.*, 978 F.2d 1334 (4th Cir. 1992) (applying South Carolina law); *Morris v. Adams*, 903 So. 2d 638 (La. Ct. App. 2d Cir. 2005); *Fredericksen v. Henke*, 167 Minn. 356, 209 N.W. 257, 46 A.L.R. 785 (1926); *Newkirk v. Porter*, 237 N.C. 115, 74 S.E.2d 235 (1953); *Lewis v. Smith*, 1940 OK 276, 187 Okla. 404, 103 P.2d 512 (1940); *Salinas v. Gutierrez*, 341 S.W.2d 558 (Tex. Civ. App. San Antonio 1960), writ refused n.r.e., (Apr. 26, 1961).
- 12 § 75.
- 13 *Whittington v. Cameron*, 385 Ill. 99, 52 N.E.2d 134, 150 A.L.R. 551 (1943); *Charles v. Pickens*, 214 Mo. 212, 112 S.W. 551 (1908).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 75

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### G. Continuity of Possession

##### 2. Tacking of Successive Possessions

##### a. In General

## § 75. Between whom privity of possession exists—Decedent or heirs and representative of estate or purchaser from representative of estate

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  43(6)

#### A.L.R. Library

[Adverse possession of executor or administrator or his vendee as continuous with that of ancestor and heirs, 43 A.L.R.2d 1061](#)

Some authorities hold that, because the adverse possession of an executor or administrator is continuous with that of the decedent or the latter's heirs, the possession of the personal representative may be tacked to that of the decedent or the latter's heirs for the purposes of determining whether the possession of property continued uninterrupted for a sufficient time to perfect the title by adverse possession.<sup>1</sup> Similarly, the possession of a testator has been held continued by the possession of an executor asserting ownership for the benefit of the estate under a will empowering the executor to sell the property and vesting in the executor the power to carry out that power.<sup>2</sup> The adverse possession of a purchaser from an executor or administrator also has been held continuous with that of the ancestor or heirs.<sup>3</sup> Other authority, however, holds that, in the absence of a statute providing otherwise, privity does not exist between a decedent and the administrator of the estate.<sup>4</sup>

Footnotes

- 1 Cannon v. Prude, 181 Ala. 629, 62 So. 24 (1913); Farlow v. Brown, 208 Ga. 646, 68 S.E.2d 903 (1952); Stalcup v. Lingle, 76 Ind. App. 242, 131 N.E. 852 (1921); Abbott v. Mars, 277 Mass. 122, 177 N.E. 829 (1931); Vanderbilt v. Chapman, 172 N.C. 809, 90 S.E. 993 (1916); Sinclair Refining Co. v. Romohr, 95 Ohio App. 93, 52 Ohio Op. 456, 117 N.E.2d 489, 43 A.L.R.2d 1058 (1st Dist. Clinton County 1953).
- 2 Vanderbilt v. Chapman, 172 N.C. 809, 90 S.E. 993 (1916).
- 3 Abbott v. Mars, 277 Mass. 122, 177 N.E. 829 (1931); Vanderbilt v. Chapman, 172 N.C. 809, 90 S.E. 993 (1916); Sinclair Refining Co. v. Romohr, 95 Ohio App. 93, 52 Ohio Op. 456, 117 N.E.2d 489, 43 A.L.R.2d 1058 (1st Dist. Clinton County 1953).
- 4 Charles v. Pickens, 214 Mo. 212, 112 S.W. 551 (1908).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 76

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### G. Continuity of Possession

##### 2. Tacking of Successive Possessions

##### b. Necessity of Inclusion of Land in Deed

## § 76. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  [43\(1\)](#), [43\(2\)](#)

#### A.L.R. Library

[Tacking adverse possession of area not within description of deed or contract, 17 A.L.R.2d 1128](#)

One who has acquired property by deed and seeks to tack the prior adverse possession of his or her grantor onto his or her own possession, to establish continuity of possession for purposes of adverse possession, ordinarily must show an express reference to or description of the disputed property in the grantor's deed.<sup>1</sup> Possession generally cannot be tacked to make out title by adverse possession where the deed by which the last occupant claims title does not include the land in dispute.<sup>2</sup>

The general rule is a deed does not of itself create privity between the grantor and the grantee as to land not described in the deed but occupied by the grantor even if the grantee enters into possession of the land not described and uses it in connection with the land that was conveyed.<sup>3</sup> This general rule, however, has been held to be applicable only to those cases in which the deed itself is solely relied on to create privity and in the absence of any circumstance showing an intent to transfer the possession of any property beyond the calls of the deed.<sup>4</sup> If, in connection with a conveyance of lands, there are circumstances showing an intent to transfer to the grantee the possession of other adjacent land occupied by the grantor, but not covered by the deed, there is privity,

and the grantee is entitled to tack the period of the grantor's occupancy to the grantee's own in establishing title by adverse possession to the land not conveyed.<sup>5</sup> Successive adverse possessions of property omitted from a deed description therefore may be tacked if it appears that the adverse possessor intended to and actually turned over possession of the undescribed part with the portion of the land included in the deed.<sup>6</sup> Under these circumstances, it is not the deed that creates privity but the transfer of possession found from facts outside the deed.<sup>7</sup> A purchaser of land thus may tack the adverse possession of a predecessor in interest if the land was intended to be included in the deed between them but was mistakenly omitted from the description.<sup>8</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- 1 [Cutliff v. Densmore](#), 354 Mich. 586, 93 N.W.2d 307 (1958).
- 2 [Senez v. Collins](#), 182 Md. App. 300, 957 A.2d 1057 (2008).
- 3 [Cutliff v. Densmore](#), 354 Mich. 586, 93 N.W.2d 307 (1958); [Kramper v. St. John's Church of Vista](#), 131 Neb. 840, 270 N.W. 478 (1936); [Burns v. Crump](#), 245 N.C. 360, 95 S.E.2d 906 (1957); [Peoples v. Hagaman](#), 31 Tenn. App. 398, 215 S.W.2d 827 (1948).  
When title by adverse possession is inchoate, a deed by the grantor which fails to convey such inchoate right is ineffective to create privity which allows tacking. [Sears v. Catholic Archdiocese of Washington](#), 5 A.3d 653 (D.C. 2010).
- 4 [Marvel v. Barley Mill Road Homes](#), 34 Del. Ch. 417, 104 A.2d 908 (1954); [Cutliff v. Densmore](#), 354 Mich. 586, 93 N.W.2d 307 (1958); [Lurvey v. Burrell](#), 317 S.W.2d 458 (Mo. 1958); [Alukonis v. Kashulines](#), 96 N.H. 107, 70 A.2d 202, 17 A.L.R.2d 1125 (1950); [Peoples v. Hagaman](#), 31 Tenn. App. 398, 215 S.W.2d 827 (1948).
- 5 [Bussey v. Bussey](#), 403 So. 2d 907 (Ala. 1981); [Cooper v. Tarpley](#), 112 Ind. App. 1, 41 N.E.2d 640 (1942); [Big Run Coal & Clay Co. v. Helton](#), 323 S.W.2d 855 (Ky. 1959); [Freed v. Cloverlea Citizens Ass'n, Inc.](#), 246 Md. 288, 228 A.2d 421 (1967); [Dubois v. Karazin](#), 315 Mich. 598, 24 N.W.2d 414 (1946); [Fredericksen v. Henke](#), 167 Minn. 356, 209 N.W. 257, 46 A.L.R. 785 (1926); [Brand v. Prince](#), 35 N.Y.2d 634, 364 N.Y.S.2d 826, 324 N.E.2d 314 (1974); [Morgan v. Jenson](#), 47 N.D. 137, 181 N.W. 89 (1921); [Sinclair Refining Co. v. Romohr](#), 95 Ohio App. 93, 52 Ohio Op. 456, 117 N.E.2d 489, 43 A.L.R.2d 1058 (1st Dist. Clinton County 1953); [Shuttles v. Butcher](#), 1 S.W.2d 661 (Tex. Civ. App. El Paso 1927), writ refused, (May 9, 1928).  
In an ejectment action concerning a disputed strip of land, a defendant who claimed title by adverse possession could tack his period of possession onto that of his predecessor in interest because, although the predecessor did not convey the disputed strip, the predecessor testified that he intended to convey, and the defendant testified that he intended to purchase, all of the land, including the disputed strip. [Kennedy v. Findley](#), 552 S.W.2d 352 (Mo. Ct. App. 1977).
- 6 [Stroem v. Plackis](#), 96 A.D.3d 1040, 948 N.Y.S.2d 90 (2d Dep't 2012).
- 7 [Cooper v. Tarpley](#), 112 Ind. App. 1, 41 N.E.2d 640 (1942); [Mary v. Maurer](#), 339 Mich. 115, 62 N.W.2d 455 (1954).  
Where in an action to quiet title there is evidence that the plaintiff was shown boundaries which included the strip of land in dispute by her predecessor in title and that such tract had been enclosed and cultivated for many years by the plaintiff and her predecessors, the plaintiff, in support of her right to such tract by adverse possession, may tack the possession of her predecessors in title even though the deeds in her chain of title do not include the strip in question. [Alukonis v. Kashulines](#), 96 N.H. 107, 70 A.2d 202, 17 A.L.R.2d 1125 (1950).
- 8 [Buchanan v. Cassell](#), 53 Wash. 2d 611, 335 P.2d 600 (1959).

### 3 Am. Jur. 2d Adverse Possession § 77

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### G. Continuity of Possession

##### 2. Tacking of Successive Possessions

##### b. Necessity of Inclusion of Land in Deed

## § 77. Exclusion of property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  [43\(1\)](#), [43\(2\)](#)

A grantor's adverse possession of property will not accrue to the benefit of the grantee through tacking when the deed of conveyance from the grantor to the grantee expressly excludes conveyance of the disputed parcel.<sup>1</sup> Thus, if the deed expressly excludes certain property occupied by the grantor in connection with that conveyed, the grantee, though succeeding to the possession of the excluded property, cannot tack the grantor's possession to that of the grantee.<sup>2</sup> Otherwise, a person receiving a conveyance of a part of lands occupied by a predecessor might use the possession of that predecessor of another part of the land to defeat the right of the predecessor with respect to the part of the land that the predecessor intended to keep.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> [Sears v. Catholic Archdiocese of Washington](#), 5 A.3d 653 (D.C. 2010); [Comrie, Inc. v. Holmes](#), 40 A.D.3d 1346, 836 N.Y.S.2d 377 (3d Dep't 2007).
- <sup>2</sup> [Doty v. Chalk](#), 632 P.2d 644 (Colo. App. 1981); [Marquis v. Drost](#), 155 Conn. 327, 231 A.2d 527 (1967); [Trustees of Broadfording Church of the Brethren v. Western Md. Ry. Co.](#), 262 Md. 84, 277 A.2d 276 (1971); [Kramper v. St. John's Church of Vista](#), 131 Neb. 840, 270 N.W. 478 (1936); [Meerhoff v. Rouse](#), 4 A.D.2d 740, 163 N.Y.S.2d 746 (4th Dep't 1957); [Gerhart v. Hilsenbeck](#), 164 Pa. Super. 85, 63 A.2d 124 (1949).
- <sup>3</sup> [Sorensen v. Costa](#), 32 Cal. 2d 453, 196 P.2d 900 (1948).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 78

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### G. Continuity of Possession

##### 2. Tacking of Successive Possessions

##### b. Necessity of Inclusion of Land in Deed

## § 78. Unconveyed land enclosed with that conveyed

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  43(1), 43(2)

#### A.L.R. Library

[Tacking adverse possession of area not within description of deed or contract, 17 A.L.R.2d 1128](#)

It has been held that, if land that is being claimed by an adverse possessor is included in the same enclosure with land owned and conveyed by the claimant's grantor, the taking of possession by the claimant of the entire enclosed area creates a privity with the grantor as to the portion that was not conveyed.<sup>1</sup> Thus, if a purchaser of land encloses and occupies a tract outside described boundaries, believing it to be included, and in that belief conveys it to another by the same description, intending that the grantee will take the whole enclosed area, the grantor's possession may be tacked to that of the grantee.<sup>2</sup> In other words, where a person having title by deed to a tract of land described in the deed also has enclosed with it and is in possession of adjoining land to which he or she has no record title and conveys the land by the description in the deed, and delivers with it the possession of the entire enclosure, the continuity of possession will not be broken, and the two possessions may be joined and considered as one continuous possession.<sup>3</sup>



Other authority has held that successive possessions of land not within a deed of conveyance may be tacked only if the property under possession is marked by visible bounds.<sup>4</sup> It also has been held that, even if land adversely held is included in the same enclosure with land owned and conveyed by the grantor, the taking of possession by the grantee of the entire enclosed area does not create a privity with the grantor as to the portion not conveyed.<sup>5</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- 1 [St. Louis Southwestern Ry. Co. v. Mulkey](#), 100 Ark. 71, 139 S.W. 643 (1911); [Prestrud v. Young](#), 124 Colo. 95, 242 P.2d 613 (1951); [Marvel v. Barley Mill Road Homes](#), 34 Del. Ch. 417, 104 A.2d 908 (1954); [Cooper v. Tarpley](#), 112 Ind. App. 1, 41 N.E.2d 640 (1942); [Big Run Coal & Clay Co. v. Helton](#), 323 S.W.2d 855 (Ky. 1959); [Wishart v. McKnight](#), 178 Mass. 356, 59 N.E. 1028 (1901); [Fredericksen v. Henke](#), 167 Minn. 356, 209 N.W. 257, 46 A.L.R. 785 (1926); [Auldridge v. Spraggin](#), 349 Mo. 858, 163 S.W.2d 1042 (1942); [McCormick v. Sorenson](#), 58 Wash. 107, 107 P. 1055 (1910).  
Although a disputed strip of land was not included in the instrument of conveyance, the purchaser was allowed to tack the adverse possession of the prior holder because the boundary line contended for by the purchasers was well-defined by a fence running generally parallel to a section line described in the deeds, because the prior holder was in possession of and using the property up to the fence at the time he contracted to sell, and because the purchaser was placed in actual possession of the entire property, including the disputed strip. [Watson v. Price](#), 356 So. 2d 625 (Ala. 1978).
- 2 [Graham v. Hawkins](#), 281 Ala. 288, 202 So. 2d 74 (1967); [St. Louis Southwestern Ry. Co. v. Mulkey](#), 100 Ark. 71, 139 S.W. 643 (1911); [Prestrud v. Young](#), 124 Colo. 95, 242 P.2d 613 (1951); [Cooper v. Tarpley](#), 112 Ind. App. 1, 41 N.E.2d 640 (1942); [Big Run Coal & Clay Co. v. Helton](#), 323 S.W.2d 855 (Ky. 1959); [McCormick v. Sorenson](#), 58 Wash. 107, 107 P. 1055 (1910); [Clithero v. Fenner](#), 122 Wis. 356, 99 N.W. 1027 (1904).  
Although, according to the deed, the true boundary line between the plaintiff's property and that of the defendant was the north and south centerline of the section, because for more than 30 years a boundary line fence had been maintained more than 50 feet to the west of that line, and the successive owners in the defendant's chain of title had successively succeeded to possession up to the fence line, and the plaintiff, until shortly before commencing the action, had not realized that the fence did not mark the boundary line called for by the deeds, the defendant was entitled to tack to his own the possession of his predecessors in interest. [Lively v. Wick](#), 122 Colo. 156, 221 P.2d 374 (1950).
- 3 [Lacy v. Adams](#), 256 S.W.3d 610 (Mo. Ct. App. S.D. 2008).
- 4 [Isacks v. Deutsch](#), 114 So. 2d 746 (La. Ct. App. 1st Cir. 1959).
- 5 [Jeffries v. Sheehan](#), 242 Mich. 167, 218 N.W. 703 (1928).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 79

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### G. Continuity of Possession

##### 2. Tacking of Successive Possessions

##### b. Necessity of Inclusion of Land in Deed

## § 79. Encroached-on land included with that conveyed

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  43(1), 43(2)

#### A.L.R. Library

[Tacking adverse possession of area not within description of deed or contract, 17 A.L.R.2d 1128](#)

Generally, the fact that the seller and purchaser were successively in adverse possession of buildings or other structures encroaching on land adjoining that described in the deed is convincing evidence of a transfer to the purchaser of possession of the area so appropriated.<sup>1</sup> Thus, it has been held that a grantee could tack the possession of an area on which an encroaching building stood to the possession of the grantor although the deed describes the boundary of the premises as running to the lot of the adjoining owner.<sup>2</sup> However, notwithstanding the fact that structures encroach on land adjoining that described in the deed, special circumstances may exclude any sound basis for tacking the possessions of seller and purchaser.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- 1 [Wishart v. McKnight](#), 178 Mass. 356, 59 N.E. 1028 (1901); [Lewis v. Idones](#), 280 A.D. 980, 116 N.Y.S.2d 382 (2d Dep't 1952); [McCormick v. Sorenson](#), 58 Wash. 107, 107 P. 1055 (1910).
- 2 [Belotti v. Bickhardt](#), 228 N.Y. 296, 127 N.E. 239 (1920).
- There was sufficient privity to allow tacking of period of possession because a brother ran a fence along what he believed to be the correct property line; conveyed the property to the sister, who erected half of the house on the disputed strip; the sister conveyed the property back to the brother, who in turn reconveyed it back to her; and the sister was put in actual possession of the disputed land adversely held by the immediate grantor. [Carpenter v. Huffman](#), 294 Ala. 189, 314 So. 2d 65 (1975).
- 3 [Maremont v. Ovenu](#), 329 Ill. 374, 160 N.E. 572 (1928) (owner of land encroached on by eight inches used wall of encroaching structure as common wall); [Miller v. Roberson](#), 165 S.W.2d 469 (Tex. Civ. App. Eastland 1942), writ refused w.o.m., (Jan. 6, 1943) (possession of a mortgagor held not to tack to the possession of a purchaser from the bank that foreclosed on the mortgage).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 80

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### G. Continuity of Possession


#### 3. Interruption of Continuity

##### a. In General

## § 80. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  46.1

An interruption of the continuity of possession of the adverse claimant will cease the running of the prescribed period for a claim of adverse possession.<sup>1</sup> The length of time for which an interruption in the possession exists is immaterial because any substantial interruption of the possession of an adverse claimant destroys the continuity of possession and is fatal to a claim of title by adverse possession.<sup>2</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

<sup>1</sup> [Dowley v. Morency](#), 1999 ME 137, 737 A.2d 1061 (Me. 1999); [Goen v. Sansbury](#), 219 Md. 289, 149 A.2d 17 (1959); [Trotter v. Gaddis and McLaurin, Inc.](#), 452 So. 2d 453 (Miss. 1984).

<sup>2</sup> As to the moment adverse possession is broken, constructive possession is restored to the owner, see [§ 67](#). [Horton v. Smith-Richardson Inv. Co.](#), 81 Fla. 255, 87 So. 905 (1921).

As to temporary breaks or insubstantial interruptions, see [§ 82](#).

## 3 Am. Jur. 2d Adverse Possession § 81

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### G. Continuity of Possession

#### 3. Interruption of Continuity

##### a. In General

## § 81. Common ownership

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  46.1

The fact that two tracts of land come into common ownership interrupts the continuity of the adverse possession of one of the tracts that was begun before the common ownership.<sup>1</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- 1 [Salazar v. Terry](#), 911 P.2d 1086 (Colo. 1996); [Porterfield v. Spurgeon](#), 379 So. 2d 56 (La. Ct. App. 3d Cir. 1979), writ denied, 381 So. 2d 1235 (La. 1980).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 82

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### G. Continuity of Possession

##### 3. Interruption of Continuity

##### a. In General

## § 82. Temporary or insubstantial interruption

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  46.1

A temporary break or interruption that is not of unreasonable duration does not destroy the continuity of a claimant's possession of property for purposes of adverse possession.<sup>1</sup> Moreover, a temporary absence from the land, without an intention to abandon possession, will not break the continuity of possession.<sup>2</sup> Thus, where a vacancy is reasonable and the circumstances show that the claimant did not intend to abandon his or her claim, a temporary cessation of use of property will not break the continuity of possession required for purposes of an adverse possession claim.<sup>3</sup>

#### Observation:

If there is a break in the continuity of possession, the party claiming title through adverse possession must show that it existed only for a reasonable period.<sup>4</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Thompson v. Ratcliff](#), 245 S.W.2d 592 (Ky. 1952); [Gammons v. Caswell](#), 447 A.2d 361 (R.I. 1982); [Dawson v. Tumlinson](#), 150 Tex. 451, 242 S.W.2d 191 (1951); [Amey v. Hall](#), 123 Vt. 62, 181 A.2d 69 (1962); [Bruch v. Benedict](#), 62 Wyo. 213, 165 P.2d 561 (1946).
- As to breaks in the continuity of possession in accordance with seasonal use generally not destroying the continuous possession of lands used for seasonal activities, see § 69.
- 2 [Bradbury v. Dumond](#), 80 Ark. 82, 96 S.W. 390 (1906); [Combs v. Ezell](#), 232 Ky. 602, 24 S.W.2d 301 (1930); [Feinstein v. McGuire](#), 297 S.W.2d 513 (Mo. 1957).
- 3 [Conley v. Comstock Oil & Gas, LP](#), 356 S.W.3d 755 (Tex. App. Beaumont 2011).
- 4 [Hardy v. Bumpstead](#), 41 S.W.2d 226, 76 A.L.R. 1488 (Tex. Comm'n App. 1931).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 83

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### G. Continuity of Possession


#### 3. Interruption of Continuity

##### a. In General

## § 83. Temporary or insubstantial interruption— Vacancy during transfer of title or change of tenants

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  46.1

The continuity of possession by a claimant under adverse possession is not affected by a temporary and reasonable vacancy of the premises occurring between the time of a conveyance by the adverse holder and the entry into possession of the purchaser or a tenant.<sup>1</sup> If one adverse occupant, however, sells the rights to another, who does not enter on the land, and whose tenant merely repairs the improvements on the land, the chain of adverse holding is broken by the interval between the adverse holding of the original occupant and that of a subsequent grantee.<sup>2</sup>

The continuity of an adverse possession is not affected by a vacancy incident to a change in tenants provided the hiatus is not of unreasonable length when considered with reference to the purposes for which the premises are adapted.<sup>3</sup> The burden is on the claimant, however, to show that the interval between tenancies was reasonable,<sup>4</sup> and in the absence of evidence as to the length of such intervals, the court cannot assume that they were short.<sup>5</sup> An unreasonable interval between possessions by successive tenants constitutes an interruption in adverse possession even if there was considerable difficulty in obtaining tenants.<sup>6</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- 1 [Douglas v. Skelly Oil Co.](#), 201 Miss. 23, 28 So. 2d 227 (1946); [Hubbard v. Swofford Bros. Dry Goods Co.](#), 209 Mo. 495, 108 S.W. 15 (1907); [Bruch v. Benedict](#), 62 Wyo. 213, 165 P.2d 561 (1946).



A one-month vacancy of a home, occurring when the couple in the homeowners' chain of title moved out of the home and prior to the homeowners moving into the home after purchase, did not interrupt such couple's adverse possession of the wedge of land between the home and adjacent lot on which the home's driveway had been built, for purposes of the homeowners' adverse possession claim. [McNeil v. Ketchens](#), 397 Ill. App. 3d 375, 341 Ill. Dec. 616, 931 N.E.2d 224 (4th Dist. 2010).

2 [Hellard v. Hubbard](#), 160 Ky. 304, 169 S.W. 727 (1914).

3 [Dawson v. Tumlinson](#), 150 Tex. 451, 242 S.W.2d 191 (1951); [Bruch v. Benedict](#), 62 Wyo. 213, 165 P.2d 561 (1946).

As to whether adverse possession may be maintained through a tenant, see § 21.

4 [Dunn v. Taylor](#), 102 Tex. 80, 113 S.W. 265 (1908).

5 [Dunn v. Taylor](#), 102 Tex. 80, 113 S.W. 265 (1908).

6 [Reeves v. Porta](#), 173 Or. 147, 144 P.2d 493 (1944); [Dunn v. Taylor](#), 102 Tex. 80, 113 S.W. 265 (1908).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 84

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### G. Continuity of Possession

#### 3. Interruption of Continuity

##### a. In General

## § 84. Attornment by tenant; tenant's recognition of title in third person

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  46.1, 50

### A.L.R. Library

[Adverse possession of landlord as affected by tenant's recognition of title of third person, 38 A.L.R.2d 826](#)

Under the general rule that attornment to a third party (the acceptance of a third party as the landlord) does not affect a tenant's relationship with the original landlord or entitle a tenant to deny or dispute the original landlord's title,<sup>1</sup> a tenant's wrongful attornment to a third person is generally ineffectual in itself to affect the continuity of the landlord's possession for purposes of adverse possession.<sup>2</sup> Thus, subject to certain conditions and exceptions, the acknowledgment or recognition of the title of a third person by one occupying land as the tenant of an adverse claimant, without the latter's knowledge or consent, does not interrupt the continuity of the adverse possession.<sup>3</sup> If a tenant attorns to an owner who lacks knowledge of the landlord's claim, however, the possession by the tenant then becomes that of the owner, and it is broken for the landlord.<sup>4</sup> If the landlord has or acquires notice of the tenant's recognition of the title of another and takes no action to protect his or her interest, the continuity of adverse possession is also interrupted.<sup>5</sup>

Footnotes

- 1 [Am. Jur. 2d, Landlord and Tenant § 772.](#)
- 2 [Eckert v. Miller, 57 Ariz. 94, 111 P.2d 60 \(1941\).](#)  
As to the effect of the relationship of landlord and tenant on the right of a tenant to claim adversely to the landlord, see §§ [186](#) to [189](#).
- 3 [Kimble v. Willey, 204 F.2d 238, 38 A.L.R.2d 814 \(8th Cir. 1953\) \(applying Arkansas law\); Ellsworth v. Eslick, 91 Kan. 287, 137 P. 973 \(1914\); Jackson v. Ward, 292 S.W. 7 \(Mo. 1927\); Point Mountain Coal & Lumber Co. v. Holly Lumber Co., 71 W. Va. 21, 75 S.E. 197 \(1912\).](#)
- 4 [Kirby Lumber Corp. v. Laird, 231 F.2d 812 \(5th Cir. 1956\).](#)
- 5 [Van Deventer v. Lott, 172 F. 574 \(C.C.E.D. N.Y. 1909\), aff'd, 180 F. 378 \(C.C.A. 2d Cir. 1910\) \(applying law of New York\); Custer v. Hall, 71 W. Va. 119, 76 S.E. 183 \(1912\).](#)

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 85

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### G. Continuity of Possession

#### 3. Interruption of Continuity

##### a. In General

## § 85. Acts of trespassers or intruders

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  48, 49

A mere casual or occasional trespass on land by a stranger to the title does not interrupt the continuity of an adverse possession.<sup>1</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- <sup>1</sup> [Turnipseed v. Moseley](#), 248 Ala. 340, 27 So. 2d 483, 170 A.L.R. 882 (1946) (occasional or desultory acts of entry and cutting of timber from a swampy and densely wooded tract of land by an adjoining landowner without color of title to the woodland, being neither exclusive nor continuous); [Batchelder v. Robbins](#), 95 Me. 59, 49 A. 210 (1901) (entries to cultivate small patches of ground); [Bloodsworth v. Murray](#), 138 Md. 631, 114 A. 575, 22 A.L.R. 1450 (1921) (use of land by trappers); [Dorntee v. Lyons](#), 224 Mass. 256, 112 N.E. 610 (1916) (temporary obstruction, consisting of barrels with planks across the top, placed across a right-of-way); [Bruch v. Benedict](#), 62 Wyo. 213, 165 P.2d 561 (1946).  
The straying of cattle on the premises does not interrupt the continuity of a claimant's adverse possession. [Norgard v. Busher](#), 220 Or. 297, 349 P.2d 490, 80 A.L.R.2d 1161 (1960).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 86

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### G. Continuity of Possession

#### 3. Interruption of Continuity

##### a. In General

## § 86. Mortgage foreclosure

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  48, 52

The continuity of possession of a claimant for purposes of adverse possession is not interrupted by a mortgage foreclosure action and sale of the premises pursuant to the judgment in such an action.<sup>1</sup> After the foreclosure of a mortgage and issuance of a sheriff's certificate of sale to the purchaser, however, the mortgagor does not have color of title for adverse possession purposes.<sup>2</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

<sup>1</sup> [Lewis v. Idones](#), 280 A.D. 980, 116 N.Y.S.2d 382 (2d Dep't 1952).

<sup>2</sup> [Bell v. Gussenhoven](#), 132 Mont. 346, 318 P.2d 251 (1957).

As to color of title, generally, see § 111.

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 87

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### G. Continuity of Possession

#### 3. Interruption of Continuity

##### a. In General

## § 87. Acquisition of property by a governmental entity; tax forfeitures

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  [47](#), [48](#), [52](#)

### A.L.R. Library

[Tax sales or forfeitures by or to governmental units as interrupting adverse possession, 50 A.L.R.2d 600](#)

The acquisition of property by a governmental entity ordinarily will interrupt any claim of adverse possession.<sup>1</sup> Thus, it has been held that forfeiture of title to a governmental entity for the nonpayment of taxes suspends the operation of the statute of limitations for purposes of adverse possession.<sup>2</sup> Where the property is sold by a governmental entity at a valid tax sale, the tax sale acts to terminate the prior title and creates a new title granted by the sovereign, and accordingly, the new title cannot be adversely possessed until the statutory period runs from the title of the creation of the new title.<sup>3</sup> If the government's interest is considered to be in the nature of a lien, or something less than full title, adverse possession, however, has been held to continue after forfeiture.<sup>4</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- 1                   Wood v. Mayo, 240 La. 109, 121 So. 2d 503 (1960); Lyndel Corp. v. Loria, 77 Misc. 2d 1066, 355 N.Y.S.2d 699 (N.Y. City Civ. Ct. 1973).  
As to lands owned by governments or their subdivisions and agencies not being subject to adverse possession, generally, see §§ 257 to 260.
- 2                   Harrison v. Everett, 135 Colo. 55, 308 P.2d 216 (1957); Greene v. Esquibel, 58 N.M. 429, 272 P.2d 330 (1954); Dunlap v. Mayer, 1959 OK 125, 341 P.2d 258 (Okla. 1959).
- 3                   Lippert v. Jung, 366 Md. 221, 783 A.2d 206 (2001); Kasner v. Wilson, 1950 OK 58, 202 Okla. 497, 215 P.2d 833 (1950).
- 4                   Rupley v. Fraser, 132 Minn. 311, 156 N.W. 350 (1916).  
A forfeiture of land to the Commonwealth for nonpayment of taxes, being intended merely to create an indefeasible lien for their collection, does not constitute a break in the required continuity of adverse possession. Thomas v. Young, 196 Va. 1166, 87 S.E.2d 127, 50 A.L.R.2d 592 (1955).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 88

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### G. Continuity of Possession


#### 3. Interruption of Continuity

##### a. In General

## § 88. Death of record owner

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  55

As a general rule, the continuity of an adverse possession of real property that began during a record owner's lifetime is not interrupted by death of the owner; the statute of limitations continues to run against the heirs<sup>1</sup> and all other persons.<sup>2</sup> Thus, adverse possession by a donee under a parol gift of land is not interrupted by the donor's death.<sup>3</sup>

### Observation:

If the statute of limitations has begun to run in favor of one in adverse possession against an owner who dies leaving heirs who are minors, their disability of infancy does not ordinarily affect the operation of the statute because the disability is subsequent to the commencement of the running of limitations.<sup>4</sup>



Footnotes

- 1 [Anderson v. Shelton, 92 N.W.2d 166, 73 A.L.R.2d 1087 \(N.D. 1958\).](#)
- 2 [Leggett v. Norman, 192 Miss. 494, 6 So. 2d 578 \(1942\); Hubbard v. Swofford Bros. Dry Goods Co., 209 Mo. 495, 108 S.W. 15 \(1907\).](#)
- 3 [Lynch v. Lynch, 239 Iowa 1245, 34 N.W.2d 485 \(1948\); Delano v. Air, 157 Ky. 369, 163 S.W. 216 \(1914\).](#)
- 4 [§ 163.](#)

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 89

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### G. Continuity of Possession

#### 3. Interruption of Continuity

##### b. By Claimant

##### (1) In General

## § 89. Abandonment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  53

The continuity of an adverse claimant's possession is necessarily destroyed by abandonment of the property before the expiration of the prescribed limitation period.<sup>1</sup>

In order to constitute a sufficient abandonment to destroy the continuity of adverse possession, there must be an intention on the part of the claimant to relinquish the claim of ownership.<sup>2</sup> The act of abandonment thus must be voluntary.<sup>3</sup> If the attendant circumstances are such that a reasonable and prudent person would not be induced to suppose that the possession has been abandoned, it cannot be insisted that the statutory period required for adverse possession has been interrupted.<sup>4</sup> The possession cannot be said to have been abandoned if the property is occupied, in right of the claimant, by an agent, employee,<sup>5</sup> or tenant.<sup>6</sup>

A mere temporary removal of an enclosure around the property does not evidence an abandonment that would interrupt the continuity of the claimant's possession.<sup>7</sup> Similarly, the claimant's removal of a fence that the claimant placed on an adjoining landowner's property does not amount to an abandonment and does not defeat the claimant's claim of adverse possession as to the land between the fence and boundary, where the fence had been in place for longer than the required statutory period for adverse possession, and the claimant continued the adverse use of the property after the removal of the fence.<sup>8</sup>

Footnotes

- 1 Alaska Nat. Bank v. Linck, 559 P.2d 1049 (Alaska 1977); Massee v. Schiller, 237 Ark. 809, 376 S.W.2d 558 (1964); Kash v. Lewis, 224 Ky. 679, 6 S.W.2d 1098 (1928).
- 2 McCaughn v. Young, 85 Miss. 277, 37 So. 839 (1905); Bruch v. Benedict, 62 Wyo. 213, 165 P.2d 561 (1946).  
As to abandoned property, generally, see Am. Jur. 2d, Abandoned, Lost, and Unclaimed Property §§ 1 et seq.
- 3 Jones v. Leagan, 384 S.C. 1, 681 S.E.2d 6 (Ct. App. 2009).
- 4 Dawson v. Tumlinson, 150 Tex. 451, 242 S.W.2d 191 (1951).
- 5 Combs v. Ezell, 232 Ky. 602, 24 S.W.2d 301 (1930).
- 6 Combs v. Ezell, 232 Ky. 602, 24 S.W.2d 301 (1930).
- 7 Davies v. Wickstrom, 56 Wash. 154, 105 P. 454 (1909).
- 8 Welsch v. Smith, 113 P.3d 1284 (Colo. App. 2005).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 90

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### G. Continuity of Possession

#### 3. Interruption of Continuity


##### b. By Claimant

##### (1) In General

## § 90. Failure to repair enclosure

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  46.1

A claimant's continuous possession of property, for purposes of adverse possession, is not necessarily interrupted by permitting fences forming an enclosure of the property to fall into disrepair.<sup>1</sup> Thus, continuity of possession is not affected by the fact that fences on a tract of land that is often covered by tide become dilapidated and in bad repair.<sup>2</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

<sup>1</sup> [Norgard v. Busher](#), 220 Or. 297, 349 P.2d 490, 80 A.L.R.2d 1161 (1960).

<sup>2</sup> [Davies v. Wickstrom](#), 56 Wash. 154, 105 P. 454 (1909).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 91

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### G. Continuity of Possession

#### 3. Interruption of Continuity


##### b. By Claimant

##### (1) In General

## § 91. Interruption of cultivation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  46.1

If the cultivation of land has been relied on as constituting adverse possession, the fact that there have been temporary breaks in cultivation does not destroy the requisite continuity of possession.<sup>1</sup>

Some authority holds that a failure by the claimant to cultivate the land for one year does not interrupt his or her continuous possession of the land for purposes of adverse possession.<sup>2</sup> Other authority, however, holds that the claimant's failure to cultivate the land for one year is fatal to his or her claim of adverse possession.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- <sup>1</sup> [Lewes Trust Co. v. Grindle](#), 53 Del. 396, 170 A.2d 280 (1961); [Douglas v. Skelly Oil Co.](#), 201 Miss. 23, 28 So. 2d 227 (1946).
- <sup>2</sup> [Bradbury v. Dumond](#), 80 Ark. 82, 96 S.W. 390 (1906).
- <sup>3</sup> [Wilson v. Nugent](#), 91 S.W. 241 (Tex. Civ. App. 1906).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 92

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### G. Continuity of Possession

#### 3. Interruption of Continuity

##### b. By Claimant

##### (1) In General

## § 92. Enforced abandonment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  46.1, 53

An adverse claimant must not yield or surrender possession under the pressure of any legal procedure instituted to oust the claimant that can be successfully resisted.<sup>1</sup> Thus, if the claimant does yield, and an entry adverse to the claimant is made, the continuity of possession for purposes of adverse possession will be broken.<sup>2</sup> A possession, however, will not be regarded as interrupted by force and violence if it is promptly regained by legal methods.<sup>3</sup>

If the actual occupancy of land is temporarily prevented by floods or fire, the possessor has a reasonable time after the flood or fire has ceased to resume possession of the land to avoid a discontinuance of adverse possession during the time that occupancy was so interrupted.<sup>4</sup> For example, if land is subject to overflow during periods of high water, the failure of the claimant to use the land for grazing during those periods does not interrupt the continuity of possession if the claimant continues the use of the land when feasible.<sup>5</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- <sup>1</sup> [Horton v. Smith-Richardson Inv. Co.](#), 81 Fla. 255, 87 So. 905 (1921).  
As to legal action by the owner to regain possession as interrupting adverse possession, generally, see [§ 101](#).

- 2                    [Horton v. Smith-Richardson Inv. Co.](#), 81 Fla. 255, 87 So. 905 (1921).  
3                    [Horton v. Smith-Richardson Inv. Co.](#), 81 Fla. 255, 87 So. 905 (1921).  
4                    [Thomas v. Spencer](#), 66 Or. 359, 133 P. 822 (1913).  
5                    [Burns v. Curran](#), 282 Ill. 476, 118 N.E. 750 (1918); [Britt v. Houser](#), 171 Ky. 494, 188 S.W. 628 (1916);  
                      [Halsey v. Humble Oil & Refining Co.](#), 66 S.W.2d 1082 (Tex. Civ. App. Beaumont 1933), writ dismissed.

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 93

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### G. Continuity of Possession

#### 3. Interruption of Continuity

##### b. By Claimant

##### (2) Recognition of Title in Another

## § 93. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  50

An adverse possessor may interrupt his or her continuous possession of property by acting in a way that acknowledges the superiority of the real owner's title.<sup>1</sup> During the running of the required statutory period for adverse possession, if the claimant holds possession subordinate to another person,<sup>2</sup> or acknowledges or recognizes the title of the owner, the possession is interrupted and will not be deemed to be adverse.<sup>3</sup> Thus, an acknowledgment of the owner's title by the claimant terminates the running of the statutory period for adverse possession, and any subsequent adverse use starts the clock anew.<sup>4</sup>

The appointment of one in adverse possession as administrator of the record title owner does not necessarily suspend the adverse possession.<sup>5</sup> Thus, if the adverse claimant never took possession of the land in an official capacity as administrator, did not consider it a part of the estate, did not list it as an asset, paid all the taxes, retained the proceeds of the land, and treated it as his or her own without knowledge that the decedent's heirs had an interest in it, the adverse claimant's appointment as administrator of the owner's estate does not interrupt the adverse possession.<sup>6</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

<sup>1</sup> [Bowen v. Serksnas, 121 Conn. App. 503, 997 A.2d 573 \(2010\).](#)



- 2 As to the effect of the recognition of title in another, after an adverse possessor has acquired title, see § 238.  
*Jacobi v. Jacobi*, 345 Ill. 518, 178 N.E. 88 (1931); *Fordson Coal Co. v. Mills*, 234 Ky. 64, 27 S.W.2d 382 (1930).
- 3 As to attornment by a tenant as interrupting the adverse possession of the landlord, see § 84.  
*Rye v. Baumann*, 231 Ark. 278, 329 S.W.2d 161 (1959); *Trask v. Nozisko*, 134 P.3d 544 (Colo. App. 2006);  
*Howard v. Twibell*, 179 Ind. 67, 100 N.E. 372 (1913); *Shanks v. Collins*, 1989 OK 115, 782 P.2d 1352 (Okla. 1989).
- 4 *Bowen v. Serksnas*, 121 Conn. App. 503, 997 A.2d 573 (2010).
- 5 *Anderson v. Shelton*, 92 N.W.2d 166, 73 A.L.R.2d 1087 (N.D. 1958).
- 6 *Anderson v. Shelton*, 92 N.W.2d 166, 73 A.L.R.2d 1087 (N.D. 1958).  
As to adverse possession by an executor or administrator, generally, see § 226.

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 94

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### G. Continuity of Possession

#### 3. Interruption of Continuity

##### b. By Claimant

##### (2) Recognition of Title in Another

## § 94. Claiming as tenant; taking lease

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  50

The continuity of possession by an adverse claimant is interrupted if the claimant ceases to claim the land in fee and begins to claim it as a tenant.<sup>1</sup> Even an offer by an adverse claimant to lease or rent the premises may be evidence of recognition of title in another,<sup>2</sup> and the taking of a lease by an adverse claimant is generally regarded as a recognition of title in another that will interrupt the running of the statutory period required for adverse possession.<sup>3</sup> To have this effect, however, it is necessary that the claimant intentionally and knowingly lease the property.<sup>4</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- 1 [Holmes v. Johnson](#), 324 Mass. 450, 86 N.E.2d 924 (1949).
- 2 [Northern Pac. Ry. Co. v. Cash](#), 67 Mont. 585, 216 P. 782 (1923); [Houston Oil Co. of Texas v. Pullen](#), 272 S.W. 439 (Tex. Comm'n App. 1925).
- 3 [Woods v. Garrard](#), 282 Ky. 233, 138 S.W.2d 325 (1940); [Lucas v. New Hebron Bank](#), 181 Miss. 762, 180 So. 611 (1938); [Security Savings & Trust Co. v. Ogden](#), 123 Or. 370, 261 P. 69 (1927); [Geries v. Magness](#), 31 S.W.2d 167 (Tex. Civ. App. Amarillo 1930).
- 4 [Sowa v. Schaefer](#), 38 Ohio App. 522, 10 Ohio L. Abs. 457, 175 N.E. 745 (8th Dist. Cuyahoga County 1931).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 95

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### G. Continuity of Possession

#### 3. Interruption of Continuity

##### b. By Claimant

##### (2) Recognition of Title in Another

## § 95. Prosecution of legal action

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  50

The bringing by a claimant in adverse possession of land of an action involving title to the land that is based on the existence of a right in another is such recognition of that right as will arrest the running of the statutory period required for adverse possession.<sup>1</sup> For example, instituting an action for specific performance of a contract to convey real estate is a recognition of the title of the defendant, and some subsequent unequivocal act or declaration evidencing an adverse claim is necessary to again start the statutory period running in favor of the one instituting such suit.<sup>2</sup> It is only as to the right claimed by the defendant in an action by the claimant in possession, however, that the running of the statutory period is arrested.<sup>3</sup> Furthermore, an action to determine conflicting claims brought by an occupying claimant does not arrest the running of the statutory period for adverse possession as between the claimant and the defendant in such action if an answer is not filed, and a right hostile to the claimant is not asserted in the action.<sup>4</sup>

Some authority holds that the bringing of an action to quiet title by a person in possession of land and claiming title by adverse possession does not interrupt the adverse character of his or her possession.<sup>5</sup> Other authority, however, holds that a claim of title by adverse possession fails if possession is interrupted by the claimant's filing of an action to quiet title before the statutory period has elapsed.<sup>6</sup>

Footnotes

- 1 Johnson v. Johnson, 1938 OK 194, 182 Okla. 293, 77 P.2d 745 (1938).
- 2 Central Pac. Ry. Co. v. Tarpey, 51 Utah 107, 168 P. 554, 1 A.L.R. 1319 (1917).
- 3 Welner v. Stearns, 40 Utah 185, 120 P. 490 (1911).
- 4 Chapin v. Letcher, 93 N.W.2d 415 (N.D. 1958); Welner v. Stearns, 40 Utah 185, 120 P. 490 (1911).
- 5 Chapin v. Letcher, 93 N.W.2d 415 (N.D. 1958).
- 6 Trede v. Superior Court of City and County of San Francisco, 21 Cal. 2d 630, 134 P.2d 745 (1943).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 96

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### G. Continuity of Possession

#### 3. Interruption of Continuity

##### b. By Claimant

##### (2) Recognition of Title in Another

## § 96. Purchasing or bargaining for outstanding title, interest, or claim

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  50

A person in adverse possession of land generally may fortify that right by acquiring any outstanding interest without weakening the force or effect of the possession.<sup>1</sup> Thus, as a general rule, the continuity of the possession of an adverse claimant is not interrupted by the claimant's purchasing or bargaining for an outstanding title or interest to the land<sup>2</sup> even if the occupant was claiming under color of title.<sup>3</sup> In buying what is outstanding, there is nothing partaking of the nature of an acknowledgment of the superiority of that title or an abandonment of one's former claim.<sup>4</sup> A person may very well deny the validity of an outstanding claim or title, and yet choose to buy peace at a small price, rather than be at great expense and annoyance in litigating it.<sup>5</sup> However, an offer to purchase the legal title, or an acceptance of a conveyance of title, as distinguished from a mere outstanding claim or interest, is a recognition of that title which may interrupt an adverse possessor's continuous possession.<sup>6</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

<sup>1</sup> [Dalton v. Johnson](#), 320 S.W.2d 569 (Mo. 1959).

<sup>2</sup> [Hubbard v. Curtiss](#), 684 P.2d 842 (Alaska 1984); [Calkins v. Kousouros](#), 72 Idaho 150, 237 P.2d 1053 (1951); [Rozmarek v. Plamondon](#), 419 Mich. 287, 351 N.W.2d 558 (1984); [Alsworth v. Richmond Cedar Works](#), 172

N.C. 17, 89 S.E. 1008 (1916); Meaders v. Moore, 134 Tex. 127, 132 S.W.2d 256, 125 A.L.R. 817 (Comm'n App. 1939); Clithero v. Fenner, 122 Wis. 356, 99 N.W. 1027 (1904).

3 Bryant v. Prewitt, 132 Ky. 799, 117 S.W. 343 (1909); John L. Roper Lumber Co. v. Richmond Cedar Works, 168 N.C. 344, 84 S.E. 523 (1915).

4 Hallowell v. Borchers, 150 Neb. 322, 34 N.W.2d 404 (1948).

5 Ripley v. Miller, 165 Mich. 47, 130 N.W. 345 (1911); Dozier v. Krmpotich, 227 Minn. 503, 35 N.W.2d 696 (1949); Hallowell v. Borchers, 150 Neb. 322, 34 N.W.2d 404 (1948).

6 Tidwell v. Strickler, 457 So. 2d 365 (Ala. 1984); Provenzano v. Provenzano, 88 Conn. App. 217, 870 A.2d 1085 (2005); Munroe v. Pere Marquette Ry. Co., 226 Mich. 158, 197 N.W. 566 (1924); Myers v. Beam, 551 Pa. 670, 713 A.2d 61 (1998).

The neighbor's offer to purchase the record owner's property interrupted the accrual of the neighbor's adverse possession claim absent any ongoing dispute or outstanding claim to the property. [Cahill v. Morrow](#), 11 A.3d 82 (R.I. 2011).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 97

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### G. Continuity of Possession

#### 3. Interruption of Continuity

##### b. By Claimant

##### (2) Recognition of Title in Another

## § 97. Purchasing tax title or lease; acceptance of money to redeem property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  50

The purchase of a tax title or lease by the occupant of the taxed premises, which were assessed in the name of other parties, does not interrupt the continuity of such occupant's adverse possession.<sup>1</sup> Such a purchase is not such recognition of the rightful owner's title that would break the period of adverse possession.<sup>2</sup> A later acceptance of money paid by the record owner to redeem the property, however, would be a recognition of the owner's superior title and would therefore interrupt the continuity of possession.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- 1 [Merritt v. Westerman](#), 165 Mich. 535, 131 N.W. 66 (1911); [Monnot v. Murphy](#), 207 N.Y. 240, 100 N.E. 742 (1913).
- 2 [Monnot v. Murphy](#), 207 N.Y. 240, 100 N.E. 742 (1913).
- 3 [Monnot v. Rudd](#), 139 A.D. 651, 124 N.Y.S. 210 (1st Dep't 1910).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.



## 3 Am. Jur. 2d Adverse Possession § 98

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### G. Continuity of Possession

#### 3. Interruption of Continuity

##### c. By Owner

##### (1) Entry Effecting an Ouster of the Claimant

## § 98. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  47

An adverse possession can be interrupted by the owner's entry on the land and ouster of the adverse claimant<sup>1</sup> or, in other words, by the owner retaking possession of the property.<sup>2</sup>

Intent, as expressed or as evidenced by acts of ownership, governs the effect of the entry,<sup>3</sup> and ordinarily, the mere act of going on the land by the owner is not enough to interrupt the claimant's adverse possession.<sup>4</sup> To regain the lost possession, the owner must assert a claim to the land or perform some act that would reinstate the owner in possession.<sup>5</sup> The running of the statutory period required for adverse possession thus will be tolled by the owner's entry on the land if the entry is accompanied with an explicit declaration of purpose to repossess the land.<sup>6</sup>

The true owner of property can successfully interrupt a claimant's continuous adverse possession by entering the disputed property in an open manner with intent to take and hold possession effectively, excluding the possessor.<sup>7</sup> An owner, however, cannot interrupt an adverse possession secretly.<sup>8</sup> Thus, an entry by stealth, under circumstances showing that the owner claimed no right to enter, or an entry for purposes other than those connected with a right to enter, does not break the continuity of the adverse possession.<sup>9</sup>

Adverse possession is not interrupted by giving notice to an occupant that true title is in someone else unless the landowner, or someone in his or her behalf, acts overtly to oust the adverse claimant.<sup>10</sup> Furthermore, a verbal<sup>11</sup> or written<sup>12</sup> protest by the owner against occupancy of land by an adverse holder, without an actual entry or an action by the owner, is without effect because the owner is still disseised.

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Hubbard v. Curtiss](#), 684 P.2d 842 (Alaska 1984); [American Nat. Bank of Beaumont v. Wingate](#), 266 S.W.2d 934 (Tex. Civ. App. Beaumont 1953), writ refused n.r.e.
- 2 [McAlpin v. Bailey](#), 376 S.W.3d 613 (Ky. Ct. App. 2012).
- 3 [Armstrong v. Payne](#), 188 Cal. 585, 206 P. 638 (1922); [Hightower v. Pendergrass](#), 662 S.W.2d 932 (Tenn. 1983).
- 4 [Armstrong v. Payne](#), 188 Cal. 585, 206 P. 638 (1922); [Senez v. Collins](#), 182 Md. App. 300, 957 A.2d 1057 (2008); [Hightower v. Pendergrass](#), 662 S.W.2d 932 (Tenn. 1983).
- 5 [Senez v. Collins](#), 182 Md. App. 300, 957 A.2d 1057 (2008); [Lambert v. State](#), 211 Miss. 129, 51 So. 2d 201 (1951).  
As to the sufficiency of acts of entry, see § 99.
- 6 [Chastang v. Chastang](#), 141 Ala. 451, 37 So. 799 (1904); [Armstrong v. Payne](#), 188 Cal. 585, 206 P. 638 (1922); [Nelson v. Johnson](#), 189 Ky. 815, 226 S.W. 94 (1920).
- 7 [Crone v. Nuss](#), 46 Kan. App. 2d 436, 263 P.3d 809 (2011), review denied, (June 13, 2012).
- 8 [American Nat. Bank of Beaumont v. Wingate](#), 266 S.W.2d 934 (Tex. Civ. App. Beaumont 1953), writ refused n.r.e.
- 9 [Armstrong v. Payne](#), 188 Cal. 585, 206 P. 638 (1922); [American Nat. Bank of Beaumont v. Wingate](#), 266 S.W.2d 934 (Tex. Civ. App. Beaumont 1953), writ refused n.r.e.
- 10 [Flagg v. Faudree](#), 2012 OK CIV APP 4, 269 P.3d 45 (Div. 2 2011).
- 11 [Hubbard v. Curtiss](#), 684 P.2d 842 (Alaska 1984); [Crone v. Nuss](#), 46 Kan. App. 2d 436, 263 P.3d 809 (2011), review denied, (June 13, 2012); [Sowa v. Schaefer](#), 38 Ohio App. 522, 10 Ohio L. Abs. 457, 175 N.E. 745 (8th Dist. Cuyahoga County 1931).
- 12 [Palac v. DiSanto](#), 424 Pa. Super. 277, 622 A.2d 378 (1993).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 99

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### G. Continuity of Possession

#### 3. Interruption of Continuity

##### c. By Owner

##### (1) Entry Effecting an Ouster of the Claimant

## § 99. Sufficiency of acts of entry

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  47

### A.L.R. Library

[Owner's surveying of land as entry thereon tolling running of statute of limitations for purposes of adverse possession, 76 A.L.R.3d 1202](#)

The running of the statutory period required for adverse possession will be interrupted or tolled by the owner's entry, together with possessory acts of dominion over the land<sup>1</sup> or together with such open and notorious acts of dominion to make manifest the purpose to resume possession of the land.<sup>2</sup> The conduct claimed by an owner to work an interruption of continuous adverse possession must be such as would put a reasonably prudent person on notice that the owner's purpose is to resume possession of the land<sup>3</sup> and that such person actually has been ousted.<sup>4</sup>

Not every act by the owner related to the land interrupts actual adverse possession.<sup>5</sup> Acts of the record owner to ascertain the true condition of title are not sufficient to interrupt the running of the adverse possession.<sup>6</sup> A mere casual entry for a limited

purpose by the record owner also is not necessarily sufficient to destroy adverse possession.<sup>7</sup> Thus, occasional hunting on the property by the record owner is insufficient to interrupt the claimant's adverse possession.<sup>8</sup>

An owner's entry upon disputed land to conduct a survey, by itself, does not disrupt the continuity of adverse possession as a matter of law.<sup>9</sup> The conduct of the survey must be accompanied by an intent to recover possession or exercise dominion over the property in order to have such an effect.<sup>10</sup>

An owner of property may interrupt the continuity of a claimant's adverse possession by regularly using the property for the same purpose as the claimant.<sup>11</sup> An owner of property also may interrupt the continuity of a claimant's adverse possession by mailing a certified letter to the claimant notifying him or her that he or she was trespassing and placing "no trespassing" signs on the disputed land.<sup>12</sup> Further, the act of removal of the remnants of a deteriorating fence, which improperly marked the boundary between adjacent properties, by the owner of the disputed land, is a sufficient act to interrupt the adverse possession of the disputed property.<sup>13</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- 1 [Senez v. Collins](#), 182 Md. App. 300, 957 A.2d 1057 (2008).
- 2 [Armstrong v. Payne](#), 188 Cal. 585, 206 P. 638 (1922); [Nelson v. Johnson](#), 189 Ky. 815, 226 S.W. 94 (1920); [Bernard v. Nantucket Boys' Club, Inc.](#), 391 Mass. 823, 465 N.E.2d 236 (1984); [American Nat. Bank of Beaumont v. Wingate](#), 266 S.W.2d 934 (Tex. Civ. App. Beaumont 1953), writ refused n.r.e.  
Because both the owners of the legal title to swampy woodland and the adjoining owners exercised similar acts of possession by desultory cutting of wood from the land and by occasional sales of timber, the possessory acts of the owners of the legal title were an interruption of the continuous adverse possession of the adverse claimant and tolled the repose of their title. [Turnipseed v. Moseley](#), 248 Ala. 340, 27 So. 2d 483, 170 A.L.R. 882 (1946).
- 3 [Crone v. Nuss](#), 46 Kan. App. 2d 436, 263 P.3d 809 (2011), review denied, (June 13, 2012).
- 4 [Crone v. Nuss](#), 46 Kan. App. 2d 436, 263 P.3d 809 (2011), review denied, (June 13, 2012); [American Nat. Bank of Beaumont v. Wingate](#), 266 S.W.2d 934 (Tex. Civ. App. Beaumont 1953), writ refused n.r.e.
- 5 [Rothery v. MacDonald](#), 329 Mass. 238, 107 N.E.2d 432 (1952).
- 6 [Lambert v. State](#), 211 Miss. 129, 51 So. 2d 201 (1951).
- 7 [Smith v. Hayden](#), 772 P.2d 47 (Colo. 1989).
- 8 [Norton v. Addie](#), 324 So. 2d 497 (La. Ct. App. 2d Cir. 1975), writ issued, 326 So. 2d 378 (La. 1976) and aff'd in part, rev'd in part on other grounds, 337 So. 2d 432 (La. 1976).
- 9 [Sanford v. Dimes](#), 3 Conn. App. 639, 491 A.2d 398 (1985); [Rosencrantz v. Shields, Inc.](#), 28 Md. App. 379, 346 A.2d 237, 76 A.L.R.3d 1188 (1975); [Crown Credit Co., Ltd. v. Bushman](#), 170 Ohio App. 3d 807, 2007-Ohio-1230, 869 N.E.2d 83 (3d Dist. Auglaize County 2007).
- 10 [Crown Credit Co., Ltd. v. Bushman](#), 170 Ohio App. 3d 807, 2007-Ohio-1230, 869 N.E.2d 83 (3d Dist. Auglaize County 2007).
- 11 [MacDonough-Webster Lodge No. 26 v. Wells](#), 175 Vt. 382, 2003 VT 70, 834 A.2d 25 (2003).
- 12 [Crone v. Nuss](#), 46 Kan. App. 2d 436, 263 P.3d 809 (2011), review denied, (June 13, 2012).
- 13 [Brooking v. Vegas](#), 866 So. 2d 370 (La. Ct. App. 3d Cir. 2004), writ denied, 872 So. 2d 491 (La. 2004).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 100

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### G. Continuity of Possession

#### 3. Interruption of Continuity

##### c. By Owner

##### (1) Entry Effecting an Ouster of the Claimant

## § 100. Sufficiency of acts of entry—Grazing livestock or cutting timber

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  47

It has been held that the grazing of livestock or the cutting of timber, by the record owners of real property, defeats the continuity of possession by an adverse claimant.<sup>1</sup> Other authorities, however, have held that the grazing of livestock, the gathering of a natural crop, or the cutting of timber by the record owners of real property does not defeat the continuity of possession by an adverse claimant.<sup>2</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- <sup>1</sup> [Turnipseed v. Moseley](#), 248 Ala. 340, 27 So. 2d 483, 170 A.L.R. 882 (1946); [Raftopoulos v. Monger](#), 656 P.2d 1308, 39 A.L.R.4th 1141 (Colo. 1983) (overruled on other grounds by, [Gerner v. Sullivan](#), 768 P.2d 701 (Colo. 1989)); [Rogers v. Haughton Timber Co., Inc.](#), 503 So. 2d 1079 (La. Ct. App. 2d Cir. 1987); [Coleman v. Waddell](#), 151 Tex. 337, 249 S.W.2d 912 (1952).
- <sup>2</sup> [Dierks Lumber & Coal Co. v. Vaughn](#), 131 F. Supp. 219 (E.D. Ark. 1954), judgment [aff'd](#), 221 F.2d 695 (8th Cir. 1955) (applying Arkansas law); [Nelson v. Johnson](#), 189 Ky. 815, 226 S.W. 94 (1920); [Lone Star Steel Co. v. Owens](#), 302 S.W.2d 213 (Tex. Civ. App. Texarkana 1957), writ [refused n.r.e.](#); [Zellmer v. Martin](#), 157 Wis. 341, 147 N.W. 371 (1914).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 101

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### G. Continuity of Possession

#### 3. Interruption of Continuity

##### c. By Owner

#### (2) Legal Proceedings Regarding Title or Possession

## § 101. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  47, 51

An adverse possession can be interrupted by the owner filing suit,<sup>1</sup> or bringing an action seeking to establish title to the property which conflicts with the title claimed by the adverse claimant,<sup>2</sup> such as by bringing an action for trespass or ejectment,<sup>3</sup> or one to quiet title.<sup>4</sup> In order for the litigation to toll the statutory period required for an adverse possession claim, it must involve the right to possession,<sup>5</sup> include the adverse possession claimant as a party,<sup>6</sup> and be prosecuted to final judgment.<sup>7</sup> A judgment entered against the adverse claimant in such an action breaks the continuity of the adverse possession.<sup>8</sup>

In a suit to quiet title by one in possession of real property under an adverse claim, an answer by the defendant disputing the plaintiff's title will suspend the plaintiff's possession from the date of the answer, provided the answer is successfully prosecuted in the action,<sup>9</sup> although an unsuccessful denial of title does not break the continuity of the plaintiff's possession.<sup>10</sup> Filing a counterclaim challenging the title of the plaintiff and making a claim of ownership of the property in the defendant also interrupts the adverse character of the plaintiff's possession if the counterclaim is successfully prosecuted and judgment is awarded to the defendant.<sup>11</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- 1                   McAlpin v. Bailey, 376 S.W.3d 613 (Ky. Ct. App. 2012); Flagg v. Faudree, 2012 OK CIV APP 4, 269 P.3d  
45 (Div. 2 2011).
- 2                   Tungsten Holdings, Inc. v. Parker, 2001 MT 117, 305 Mont. 329, 27 P.3d 429 (2001).
- 3                   Nielsen v. Gibson, 178 Cal. App. 4th 318, 100 Cal. Rptr. 3d 335 (3d Dist. 2009).
- 4                   Henson v. Tucker, 278 Ga. App. 859, 630 S.E.2d 64 (2006).
- 5                   Snook v. Bowers, 12 P.3d 771 (Alaska 2000).
- 6                   Snook v. Bowers, 12 P.3d 771 (Alaska 2000).
- A person in possession, who was not a party to an ejectment suit in which a writ of restitution was issued,  
is not affected by an execution of the writ that merely constructively placed the plaintiff in possession, and  
the running of the statute of limitations in his or her favor is not tolled. [Martin v. Hall](#), 152 Ky. 677, 153  
S.W. 997 (1913).
- 7                   Gibbs v. Lester, 41 S.W.2d 28, 80 A.L.R. 431 (Tex. Comm'n App. 1931).
- 8                   Crone v. Nuss, 46 Kan. App. 2d 436, 263 P.3d 809 (2011), review denied, (June 13, 2012); [Creech v. Jenkins](#),  
276 Ky. 163, 123 S.W.2d 267 (1938); [Sanford v. Herron](#), 161 Mo. 176, 61 S.W. 839 (1901).
- 9                   Chapin v. Letcher, 93 N.W.2d 415 (N.D. 1958).
- 10                  Chapin v. Letcher, 93 N.W.2d 415 (N.D. 1958).
- 11                  Chapin v. Letcher, 93 N.W.2d 415 (N.D. 1958).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government  
Works.



## 3 Am. Jur. 2d Adverse Possession § 102

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### G. Continuity of Possession

#### 3. Interruption of Continuity

##### c. By Owner

#### (2) Legal Proceedings Regarding Title or Possession

## § 102. Unsuccessful action

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  47, 51

An unsuccessful suit on the part of the record owner against an adverse claimant does not break the continuity of adverse possession.<sup>1</sup> An action of ejectment or an action to try the title to, or obtain the possession of, real estate that fails, or that does not result in a judgment in favor of the plaintiff, does not have the effect of suspending or tolling the running of the statute of limitations in favor of the defendant.<sup>2</sup> Thus, one in possession of real estate who is not dispossessed under an adverse decision in an ejectment suit need not seek restitution on reversal of the judgment to take advantage of the adverse possession.<sup>3</sup>

In computing the period of adverse possession of land, the time of pendency of any dismissed, abandoned, or otherwise discontinued action in respect to the property is to be treated as though the action had never been instituted.<sup>4</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- <sup>1</sup> Crawford v. Sasser, 238 Ky. 543, 38 S.W.2d 434 (1931); Jones v. Schmidt, 170 Neb. 351, 102 N.W.2d 640 (1960); Gibbs v. Lester, 41 S.W.2d 28, 80 A.L.R. 431 (Tex. Comm'n App. 1931).
- <sup>2</sup> Garcia v. McLean, 355 So. 2d 504 (Fla. 1st DCA 1978); Martin v. Hall, 152 Ky. 677, 153 S.W. 997 (1913); Jones v. Schmidt, 170 Neb. 351, 102 N.W.2d 640 (1960); Chapin v. Letcher, 93 N.W.2d 415 (N.D. 1958).
- <sup>3</sup> Martin v. Hall, 152 Ky. 677, 153 S.W. 997 (1913).

4 [Thompson v. Ratcliff](#), 245 S.W.2d 592 (Ky. 1952); [Butler v. Smith](#), 84 Neb. 78, 120 N.W. 1106 (1909); [Gibbs v. Lester](#), 41 S.W.2d 28, 80 A.L.R. 431 (Tex. Comm'n App. 1931).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession II H Refs.

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### H. Claim to Property

[Topic Summary](#) | [Correlation Table](#)

## Research References

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  13, 68, 70 to 79(4), 84, 97 to 99.1, 100(1), 100(2), 100(4) to 100(6)

#### A.L.R. Library

A.L.R. Index, Adverse Possession

West's A.L.R. Digest, [Adverse Possession](#)  13, 68, 70 to 79(4), 84, 97 to 99.1, 100(1), 100(2), 100(4) to 100(6)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 103

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### H. Claim to Property

##### 1. Claim of Right, Title, or Ownership

##### a. In General

## § 103. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  13, 68, 98

### Forms

Forms relating to claim of right, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [[Westlaw® Search Query](#)]

To establish title by adverse possession, the possession of property ordinarily must be under a claim of right,<sup>1</sup> title,<sup>2</sup> or ownership.<sup>3</sup> The requirement that adverse possession claimants demonstrate a claim of right rests on the public policy that existing rights in land should not be lost unless the owner has been put on guard sufficiently to enable him or her to take preventive action with reasonable promptness.<sup>4</sup> A mere claim of title, however, will not ripen into title, no matter how long it is asserted, because it is only one of several requirements for the acquisition of title by adverse possession.<sup>5</sup> The claim of the occupant is not limited by the occupant's belief in a right to possession but only by the intent with which the occupant asserts the right.<sup>6</sup>

**Observation:**

The term "claim of right," for purposes of adverse possession, is synonymous with the terms "claim of title" and "claim of ownership."<sup>7</sup>

**CUMULATIVE SUPPLEMENT**

**Cases:**

Upon ten years of uninterrupted, quiet, peaceful and actual seisin and possession of the land, good and rightful title vests immediately in the adverse claimant. [R.I. Gen. Laws Ann. § 34-7-1](#). [Clark v. Buttonwoods Beach Association](#), 226 A.3d 683 (R.I. 2020).

**[END OF SUPPLEMENT]**

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

**Footnotes**

- 1 [Water Works & Sanitary Sewer Bd. of City of Montgomery v. Parks](#), 977 So. 2d 440 (Ala. 2007), as modified on denial of reh'g, (July 13, 2007); [O'Connor v. Larocque](#), 302 Conn. 562, 31 A.3d 1 (2011); [Lewes Trust Co. v. Grindle](#), 53 Del. 396, 170 A.2d 280 (1961); [Bailey v. Moten](#), 289 Ga. 897, 717 S.E.2d 205 (2011); [Garrett v. Huster](#), 684 N.W.2d 250 (Iowa 2004); [Moore v. Stills](#), 307 S.W.3d 71 (Ky. 2010), as corrected, (Apr. 7, 2010); [Androkites v. White](#), 2010 ME 133, 10 A.3d 677 (Me. 2010); [Beach v. Township of Lima](#), 489 Mich. 99, 802 N.W.2d 1 (2011); [Greenwood v. Young](#), 80 So. 3d 140 (Miss. Ct. App. 2012); [Watson v. Mense](#), 298 S.W.3d 521 (Mo. 2009); [Estate of Becker v. Murtagh](#), 19 N.Y.3d 75, 945 N.Y.S.2d 196, 968 N.E.2d 433 (2012); [Akin v. Castleberry](#), 2012 OK 79, 286 P.3d 638 (Okla. 2012); [Milledgeville United Methodist Church v. Melton](#), 388 S.W.3d 280 (Tenn. Ct. App. 2012), appeal denied, (Dec. 13, 2012); [Blaylock v. Holland](#), 2013 WL 1281830 (Tex. App. Dallas 2013); [Harkleroad v. Linkous](#), 281 Va. 12, 704 S.E.2d 381 (2011); [Helm v. Clark](#), 2010 WY 168, 244 P.3d 1052 (Wyo. 2010).
- 2 [Banks v. Pusey](#), 393 Md. 688, 904 A.2d 448 (2006); [Carnahan v. Cummings](#), 105 Neb. 337, 180 N.W. 558, 12 A.L.R. 1455 (1920); [Van Valkenburgh v. Lutz](#), 304 N.Y. 95, 106 N.E.2d 28 (1952); [Milledgeville United Methodist Church v. Melton](#), 388 S.W.3d 280 (Tenn. Ct. App. 2012), appeal denied, (Dec. 13, 2012); [O'Dell v. Stegall](#), 226 W. Va. 590, 703 S.E.2d 561 (2010).
- 3 [Walter v. Jones](#), 15 Ill. 2d 220, 154 N.E.2d 250 (1958); [Banks v. Pusey](#), 393 Md. 688, 904 A.2d 448 (2006); [Biddix v. McConnell](#), 911 So. 2d 468 (Miss. 2005); [Reinheimer v. Rhedans](#), 327 S.W.2d 823 (Mo. 1959); [Inserra v. Violi](#), 267 Neb. 991, 679 N.W.2d 230 (2004).
- As to possession under color of title, generally, see § 111.
- 4 [First Congregational Church of Enosburg v. Manley](#), 183 Vt. 574, 2008 VT 9, 946 A.2d 830 (2008).
- 5 [Ennis v. Stanley](#), 346 Mich. 296, 78 N.W.2d 114 (1956); [Bilby v. Wire](#), 77 N.W.2d 882 (N.D. 1956).
- As to other elements of adverse possession, generally, see § 9.

- 6 [Holmes v. Johnson](#), 324 Mass. 450, 86 N.E.2d 924 (1949); [Sturm v. Mau](#), 209 Neb. 865, 312 N.W.2d 272 (1981).
- 7 [Walker v. Sapelo Island Heritage Authority](#), 285 Ga. 194, 674 S.E.2d 925 (2009).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 104

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### H. Claim to Property

##### 1. Claim of Right, Title, or Ownership

##### a. In General

## § 104. Necessity of good faith

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  13, 68, 84

In some jurisdictions, with respect to the validity of a claim of right, or a claim of title, for purposes of adverse possession, good faith must characterize the entry and possession of the property by the adverse possessor.<sup>1</sup> In other words, a claimant must in good faith believe he or she has some claim of right or title to the premises in order to acquire title by adverse possession.<sup>2</sup> Thus, in such jurisdictions, one who does not have a good faith claim of right to the possession of property will not gain title to it by adverse possession.<sup>3</sup>

In other jurisdictions, there is no good faith requirement for adverse possession based on a claim of right,<sup>4</sup> and it is not essential that a possessor's claim of right or title should be good or believed to be good.<sup>5</sup> Thus, in such jurisdictions, a good faith belief by the possessor in his or her claim to the land is not necessary in order for the possessor to obtain title by adverse possession.<sup>6</sup> In such jurisdictions, a claim of right can be founded on a deliberate trespass,<sup>7</sup> and therefore, the conduct of an intentional trespasser, if repeated, might ripen into adverse possession.<sup>8</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> [Armstrong v. Cities Service Gas Co.](#), 210 Kan. 298, 502 P.2d 672 (1972); [Waterman v. Tidewater Associated Oil Co.](#), 213 La. 588, 35 So. 2d 225 (1947); [State v. Lee](#), 128 Wash. 2d 151, 904 P.2d 1143 (1995).

- 2                   Creel v. Hammans, 234 Iowa 532, 13 N.W.2d 305 (1944).  
3                   Simmons v. Community Renewal and Redemption, LLC, 286 Ga. 6, 685 S.E.2d 75 (2009).  
4                   Aguayo v. Amaro, 213 Cal. App. 4th 1102, 153 Cal. Rptr. 3d 52 (2d Dist. 2013).  
5                   Foster v. Foster, 267 Ala. 90, 100 So. 2d 19 (1958); Walker v. Bowen, 333 Mich. 13, 52 N.W.2d 574 (1952).  
6                   Estate of Stone v. Hanson, 621 A.2d 852 (Me. 1993); Lewis v. Moorhead, 522 N.W.2d 1 (S.D. 1994).  
7                   Aguayo v. Amaro, 213 Cal. App. 4th 1102, 153 Cal. Rptr. 3d 52 (2d Dist. 2013).  
8                   Dawson v. Falls City Boat Club, 136 Mich. 259, 99 N.W. 17 (1904); Jacque v. Steenberg Homes, Inc., 209  
                    Wis. 2d 605, 563 N.W.2d 154 (1997).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government  
Works.



## 3 Am. Jur. 2d Adverse Possession § 105

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### H. Claim to Property

##### 1. Claim of Right, Title, or Ownership

##### a. In General

## § 105. Necessity of writing

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  13, 68, 98

### A.L.R. Library

[Adverse possession under parol gift of land, 43 A.L.R.2d 6](#)

A claim of right or title, for purposes of adverse possession, need not be based on a writing.<sup>1</sup> A claim of right or title will be effective if the original entry onto the property was under an oral contract of sale,<sup>2</sup> or under a parol gift,<sup>3</sup> or under any other parol agreement.<sup>4</sup> The efficacy of the acquired title does not depend on the fact that the entry was had under an oral gift or agreement but rather on the fact that it was maintained under a claim of right.<sup>5</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- <sup>1</sup> [Holub v. Titus, 120 Ark. 620, 180 S.W. 218 \(1915\); Brooks-Scanlon Co. v. Childs, 113 Miss. 246, 74 So. 147, 2 A.L.R. 1453 \(1917\); Marion Inv. Co. v. Virginia Lincoln Furniture Corp., 171 Va. 170, 198 S.E. 508, 118 A.L.R. 939 \(1938\).](#)

As to the necessity of a writing to establish color of title, see § 113.

- 2       Holland v. Ousbye, 132 Minn. 106, 155 N.W. 1071 (1916); Brooks-Scanlon Co. v. Childs, 113 Miss. 246,  
74 So. 147, 2 A.L.R. 1453 (1917).
- 3       Pendley v. Pendley, 338 So. 2d 405 (Ala. 1976); Ramey v. Ramey, 353 S.W.2d 191 (Ky. 1962); Chatman v.  
Carter, 226 Miss. 621, 84 So. 2d 926 (1956); Harrelson v. Reaves, 219 S.C. 394, 65 S.E.2d 478, 43 A.L.R.2d  
1 (1951); Raleigh v. Wells, 29 Utah 217, 81 P. 908 (1905).
- 4       Schmidt v. Brown, 226 Ill. 590, 80 N.E. 1071 (1907); Butcher v. Butcher, 137 Mich. 390, 100 N.W. 604  
(1904); Brooks-Scanlon Co. v. Childs, 113 Miss. 246, 74 So. 147, 2 A.L.R. 1453 (1917).
- 5       Brooks-Scanlon Co. v. Childs, 113 Miss. 246, 74 So. 147, 2 A.L.R. 1453 (1917).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government  
Works.

### 3 Am. Jur. 2d Adverse Possession § 106

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### H. Claim to Property

##### 1. Claim of Right, Title, or Ownership

##### a. In General

## § 106. Nature and extent of claim

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  97, 98

The nature and extent of the estate acquired by adverse possession is fixed by the claim of the possessor, coupled with the fact of possession under the circumstances contemplated by law.<sup>1</sup> To establish title by adverse possession, the claim of right must be as broad as the possession.<sup>2</sup> If an adverse claimant claims less than the whole of a certain property, the claimant's rights will be limited accordingly because adverse title cannot be acquired to more than is claimed.<sup>3</sup> A disclaimer of title as to a part of the land, however, will not affect the claimant's adverse possession of the rest.<sup>4</sup>

If a person claims only a limited estate, and not a fee, the law will not, contrary to the claimant's intention, enlarge it to a fee.<sup>5</sup> For example, only a life estate is acquired if an adverse possessor claims only a life estate.<sup>6</sup>

A claim as a tenant cannot ripen into title in the tenant by adverse possession.<sup>7</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

<sup>1</sup> Joy v. Outlaw, 28 Tenn. App. 565, 192 S.W.2d 81 (1945).

<sup>2</sup> Brewer v. Claypool, 223 Iowa 1235, 275 N.W. 34 (1937).

<sup>3</sup> Parrillo v. Riccitelli, 84 R.I. 276, 123 A.2d 248 (1956) (portion of an unaccepted street).

- 4                    [St. William's Church, Raquette Lake, v. People, 269 A.D. 874, 56 N.Y.S.2d 868 \(3d Dep't 1945\)](#), judgment  
rev'd on other grounds, [296 N.Y. 861, 72 N.E.2d 604 \(1947\)](#).
- 5                    [Holmes v. Johnson, 324 Mass. 450, 86 N.E.2d 924 \(1949\)](#).
- 6                    [West v. Moore, 193 Tenn. 431, 246 S.W.2d 74 \(1952\)](#).
- 7                    [Holmes v. Johnson, 324 Mass. 450, 86 N.E.2d 924 \(1949\)](#).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government  
Works.

### 3 Am. Jur. 2d Adverse Possession § 107

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### H. Claim to Property

##### 1. Claim of Right, Title, or Ownership

##### a. In General

## § 107. Motive of claimant; acts after entry

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  13, 68, 98

An adverse occupant's claim of right does not depend on the remote motives or purposes of the occupant.<sup>1</sup> Thus, inquiry is not to be made into the recesses of the possessor's mind, the possessor's motives or purposes, or the possessor's guilt or innocence.<sup>2</sup> If, however, after the original entry, the claimant recognizes the real owner's title by claiming and establishing an easement by prescription across the property in question, that may show that occupation was not under a claim of title.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- 1 [Krause v. Nolte](#), 217 Ill. 298, 75 N.E. 362 (1905); [Nebraska State Bank v. Gaddis](#), 208 Neb. 136, 302 N.W.2d 686 (1981).
- 2 [Pettis v. Lozier](#), 205 Neb. 802, 290 N.W.2d 215 (1980); [Fulton v. Rapp](#), 45 Ohio Op. 494, 59 Ohio L. Abs. 105, 98 N.E.2d 430 (Ct. App. 2d Dist. Madison County 1950).
- 3 [Van Valkenburgh v. Lutz](#), 304 N.Y. 95, 106 N.E.2d 28 (1952).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 108

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### H. Claim to Property

##### 1. Claim of Right, Title, or Ownership

##### b. What Constitutes Claim of Right

## § 108. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  13, 68, 98

Terms such as "claim of right," "claim of title," and "claim of ownership," when used in connection with adverse possession, have been defined as the intention of the claimant to appropriate and use the land to the exclusion of all others,<sup>1</sup> irrespective of any semblance or shadow of actual title or right.<sup>2</sup> A claim of right means that the entry of the claimant must be with the intent to claim and hold the land as the claimant's own,<sup>3</sup> and such must continue to be the nature of his or her possession.<sup>4</sup> The term "claim of right" has been held to mean hostile,<sup>5</sup> and accordingly, some authorities hold that if possession is hostile, it is under a claim of right.<sup>6</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> [Guaranty Title & Trust Corp. v. U. S.](#), 264 U.S. 200, 44 S. Ct. 252, 68 L. Ed. 636 (1924); [In re Jake's Granite Supplies, L.L.C.](#), 442 B.R. 694 (D. Ariz. 2010) (applying Arizona law); [Roe v. Doe ex dem. Tennessee Coal, Iron & Ry. Co.](#), 162 Ala. 151, 50 So. 230 (1909); [Fredericksen v. Henke](#), 167 Minn. 356, 209 N.W. 257, 46 A.L.R. 785 (1926); [Ball v. Martin](#), 217 Miss. 221, 63 So. 2d 833 (1953); [Wiser v. Elliott](#), 228 Or. App. 489, 209 P.3d 337 (2009); [Grappo v. Blanks](#), 241 Va. 58, 400 S.E.2d 168 (1991); [Sisson v. Koelle](#), 10 Wash. App. 746, 520 P.2d 1380 (Div. 2 1974).
- As to the terms "claim of right," "claim of title," and "claim of ownership" being synonymous, see [§ 103](#).
- As to exclusive possession, see [§§ 61 to 66](#).

- 2 In re Jake's Granite Supplies, L.L.C., 442 B.R. 694 (D. Ariz. 2010) (applying Arizona law); Ball v. Martin, 217 Miss. 221, 63 So. 2d 833 (1953); Weiss v. Meyer, 208 Neb. 429, 303 N.W.2d 765 (1981); Hoffman v. Freeman Land and Timber, LLC., 329 Or. 554, 994 P.2d 106 (1999); Young Kee Kim v. Douval Corp., 259 Va. 752, 529 S.E.2d 92 (2000).
- 3 Caminis v. Troy, 300 Conn. 297, 12 A.3d 984 (2011); Eaton v. Town of Wells, 2000 ME 176, 760 A.2d 232 (Me. 2000); Myers v. Wright, 224 S.W.3d 466 (Tex. App. Dallas 2007); Selman v. Roberts, 185 W. Va. 80, 404 S.E.2d 771 (1991) (rejected on other grounds by, Brown v. Gobble, 196 W. Va. 559, 474 S.E.2d 489 (1996)).
- 4 Myers v. Wright, 224 S.W.3d 466 (Tex. App. Dallas 2007).
- 5 Whetstone Baptist Church v. Schilling, 381 S.W.3d 366 (Mo. Ct. App. S.D. 2012), reh'g and/or transfer denied, (Aug. 22, 2012) and transfer denied, (Oct. 30, 2012); Wanha v. Long, 255 Neb. 849, 587 N.W.2d 531 (1998); Hinman v. Barnes, 146 Ohio St. 497, 32 Ohio Op. 564, 66 N.E.2d 911 (1946).
- 6 Wanha v. Long, 255 Neb. 849, 587 N.W.2d 531 (1998); Hinman v. Barnes, 146 Ohio St. 497, 32 Ohio Op. 564, 66 N.E.2d 911 (1946).
- As to the hostile character of possession, generally, see § 38.

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 109

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### H. Claim to Property

##### 1. Claim of Right, Title, or Ownership

##### b. What Constitutes Claim of Right

## § 109. As determined from words or actions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  13, 70, 98

#### Forms

Forms relating to claim of right, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [[Westlaw® Search Query](#)]

The existence of a claim of right in an adverse possession case may be manifested either by words or by acts, and it is generally inferred from the latter.<sup>1</sup> It therefore is not necessary to establish a claim of right that possession be accompanied by an express declaration or claim of title; it is sufficient if the proof shows that the party in possession has acted so as to clearly indicate a claim of title.<sup>2</sup> If the claimant's acts and conduct clearly indicate a claim of right to the property, this is sufficient.<sup>3</sup> Thus, the actual occupation, use, and improvement of the premises by the claimant, as if the claimant were in fact the owner, without payment of rent or recognition of title in another, or the claimant's disavowal of title, is sufficient to raise a presumption of entry and holding as absolute owner and, unless rebutted, will establish the fact of a claim of right.<sup>4</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.



Footnotes

- 1 [Hollis v. Tomlinson](#), 585 So. 2d 862 (Ala. 1991); [Calhoun v. Woods](#), 246 Va. 41, 431 S.E.2d 285 (1993); [City of Rock Springs v. Sturm](#), 39 Wyo. 494, 273 P. 908, 97 A.L.R. 1 (1929).  
It is primarily the acts of the adverse claimant that a trial court must look at to determine objectively whether the claimant has exerted a claim of right to a disputed area. [Zadnichek v. Fidler](#), 894 So. 2d 702 (Ala. Civ. App. 2004).
- 2 [Walter v. Jones](#), 15 Ill. 2d 220, 154 N.E.2d 250 (1958); [Kendall v. Selvaggio](#), 413 Mass. 619, 602 N.E.2d 206 (1992); [Nebraska State Bank v. Gaddis](#), 208 Neb. 136, 302 N.W.2d 686 (1981); [Carnevale v. Dupee](#), 783 A.2d 404 (R.I. 2001).
- 3 [Hunsley v. Valter](#), 12 Ill. 2d 608, 147 N.E.2d 356 (1958); [Smith v. Feneley](#), 240 Mich. 439, 215 N.W. 353 (1927); [Marion Inv. Co. v. Virginia Lincoln Furniture Corp.](#), 171 Va. 170, 198 S.E. 508, 118 A.L.R. 939 (1938); [Foote v. Kearney](#), 157 Wash. 681, 290 P. 226 (1930).
- 4 [Carney v. Hennessey](#), 74 Conn. 107, 49 A. 910 (1901); [Shoer v. Daffe](#), 337 Mass. 420, 149 N.E.2d 625 (1958); [Marion Inv. Co. v. Virginia Lincoln Furniture Corp.](#), 171 Va. 170, 198 S.E. 508, 118 A.L.R. 939 (1938); [Buchanan v. Cassell](#), 53 Wash. 2d 611, 335 P.2d 600 (1959); [State v. Moore](#), 356 P.2d 141 (Wyo. 1960).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 110

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### H. Claim to Property

##### 1. Claim of Right, Title, or Ownership

##### b. What Constitutes Claim of Right

## § 110. Particular conduct

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  [13](#), [70](#) to [79\(4\)](#), [98](#)

A particular act or series of acts is not necessary to demonstrate an intention to claim a right to, or ownership in, property for purposes of adverse possession<sup>1</sup> although the claimant's conduct must clearly indicate ownership.<sup>2</sup> A claim of right, or a claim of ownership, may be evidenced by—

- possessing a void deed<sup>3</sup> or a quitclaim deed.<sup>4</sup>
- receiving the rents,<sup>5</sup> issues, and profits of the property.<sup>6</sup>
- occupying the property.<sup>7</sup>
- conveying,<sup>8</sup> devising, leasing,<sup>9</sup> or encumbering the property.<sup>10</sup>
- improving the property.<sup>11</sup>

A mere passive possession, without intending to claim the property, is insufficient to establish a claim of right regardless of the length of time it continues or however open, notorious, or exclusive it may have been.<sup>12</sup> Neither continuous and uninterrupted possession nor payment of taxes alone will establish a claim of right.<sup>13</sup>

Footnotes

- 1 Marvel v. Barley Mill Road Homes, 34 Del. Ch. 417, 104 A.2d 908 (1954); Robin v. Brown, 308 Pa. 123, 162 A. 161 (1932); Mandelbaum v. Looney Mercantile Co., 293 S.W. 203 (Tex. Civ. App. Austin 1927).
  - 2 Louisa County Conservation Bd. v. Malone, 778 N.W.2d 204 (Iowa Ct. App. 2009).
  - 3 Greenwood v. Young, 80 So. 3d 140 (Miss. Ct. App. 2012); Hoffman v. Freeman Land and Timber, LLC., 329 Or. 554, 994 P.2d 106 (1999); Bruch v. Benedict, 62 Wyo. 213, 165 P.2d 561 (1946).
  - 4 Snow v. Ingenthron, 285 S.W.3d 415 (Mo. Ct. App. S.D. 2009).
  - 5 Allen v. Wiseman, 359 Mo. 1026, 224 S.W.2d 1010 (1949).
  - 6 Preston v. Preston, 1949 OK 59, 201 Okla. 555, 207 P.2d 313 (1949).
  - 7 East Lizard Butte Water Corp. v. Howell, 122 Idaho 679, 837 P.2d 805 (1992).
  - 8 Stiff v. Cobb, 126 Ala. 381, 28 So. 402 (1900); Preston v. Preston, 1949 OK 59, 201 Okla. 555, 207 P.2d 313 (1949).
  - 9 Preston v. Preston, 1949 OK 59, 201 Okla. 555, 207 P.2d 313 (1949).
  - 10 Stiff v. Cobb, 126 Ala. 381, 28 So. 402 (1900); Warner v. Wickizer, 1930 OK 419, 146 Okla. 232, 294 P. 130 (1930).
  - 11 Childs v. Sammons, 272 Ga. 737, 534 S.E.2d 409 (2000); Warner v. Wickizer, 1930 OK 419, 146 Okla. 232, 294 P. 130 (1930); Reitsma v. Pascoag Reservoir & Dam, LLC, 774 A.2d 826 (R.I. 2001); Pioneer Investment & Trust Co. v. Board of Education of Salt Lake City, 35 Utah 1, 99 P. 150 (1909).
  - 12 Robin v. Brown, 308 Pa. 123, 162 A. 161 (1932); Pioneer Investment & Trust Co. v. Board of Education of Salt Lake City, 35 Utah 1, 99 P. 150 (1909).
  - 13 Lynch v. Lynch, 239 Iowa 1245, 34 N.W.2d 485 (1948).
- As to the payment of taxes on property, see §§ 134 to 139.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 111

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### H. Claim to Property

##### 2. Color of Title

##### a. In General

## § 111. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  13, 68, 99.1

#### Forms

Forms relating to color of title, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [[Westlaw® Search Query](#)]

Adverse possession may be established, provided that other elements of adverse possession are met, if the possession of property was under color of title, such being an alternative to possession under a claim of right.<sup>1</sup> Color of title, however, in the absence of a statutory requirement,<sup>2</sup> is not a necessary element of adverse possession.<sup>3</sup> It is therefore ordinarily not necessary in an adverse possession claim that a claimant have color of title to land actually possessed.<sup>4</sup> In certain jurisdictions, however, statutes may require that a claimant prove color of title to establish adverse possession,<sup>5</sup> or, in other words, an entry under color of title, or the subsequent acquisition of color of title, before the possession of land can be deemed to be adverse to the holder of the legal title.<sup>6</sup>

Color of title, for purposes of adverse possession, where present, serves to extend actual possession to constructive possession.<sup>7</sup> Color of title therefore may be used to show possession of an entire tract of property even though the claimant adversely possesses only a small portion of the entire tract.<sup>8</sup>

**Observation:**

The requirements for acquiring title by adverse possession may be less stringent if the claimant enters under color of title than if the claimant does not.<sup>9</sup> Adverse possession, however, cannot necessarily be proved by less evidence when the entry is under color of title than when it is not.<sup>10</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Aguayo v. Amaro](#), 213 Cal. App. 4th 1102, 153 Cal. Rptr. 3d 52 (2d Dist. 2013); [Louisa County Conservation Bd. v. Malone](#), 778 N.W.2d 204 (Iowa Ct. App. 2009); [Akin v. Castleberry](#), 2012 OK 79, 286 P.3d 638 (Okla. 2012); [O'Dell v. Stegall](#), 226 W. Va. 590, 703 S.E.2d 561 (2010); [Helm v. Clark](#), 2010 WY 168, 244 P.3d 1052 (Wyo. 2010).  
As to what constitutes color of title, generally, see § 118.  
As to other elements of adverse possession, generally, see § 9.  
As to possession of property under a claim of right, generally, see § 103.
- 2 [Ruick v. Twarkins](#), 171 Conn. 149, 367 A.2d 1380 (1976); [Gates v. Roberts](#), 350 S.W.2d 729 (Mo. 1961); [Graniteville Co. v. Williams](#), 209 S.C. 112, 39 S.E.2d 202 (1946); [City of Rock Springs v. Sturm](#), 39 Wyo. 494, 273 P. 908, 97 A.L.R. 1 (1929).
- 3 [Ruick v. Twarkins](#), 171 Conn. 149, 367 A.2d 1380 (1976); [Seaboard Air Line Ry. Co. v. Board of Bond Trustees of Special Road and Bridge Dist. No. 1 of Alachua County](#), 91 Fla. 612, 108 So. 689, 46 A.L.R. 870 (1926); [Fralely v. Minger](#), 829 N.E.2d 476 (Ind. 2005); [Yourik v. Mallonee](#), 174 Md. App. 415, 921 A.2d 869 (2007); [Naporra v. Weckwerth](#), 178 Minn. 203, 226 N.W. 569, 65 A.L.R. 124 (1929); [Gates v. Roberts](#), 350 S.W.2d 729 (Mo. 1961); [Thibault v. Flynn](#), 133 Mont. 461, 325 P.2d 914 (1958); [Graniteville Co. v. Williams](#), 209 S.C. 112, 39 S.E.2d 202 (1946); [City of Rock Springs v. Sturm](#), 39 Wyo. 494, 273 P. 908, 97 A.L.R. 1 (1929).
- 4 [Garringer v. Wingard](#), 585 So. 2d 898 (Ala. 1991); [Hamburg Realty Co. v. Walker](#), 327 S.W.2d 155 (Mo. 1959); [Belotti v. Bickhardt](#), 228 N.Y. 296, 127 N.E. 239 (1920); [City of Deadwood v. Summit, Inc.](#), 2000 SD 29, 607 N.W.2d 22 (S.D. 2000); [Murdock v. Zier](#), 2006 WY 80, 137 P.3d 147 (Wyo. 2006).
- 5 [Burns v. Stewart](#), 2011 Ark. App. 197, 382 S.W.3d 699 (2011); [City of Rio Rancho v. Amrep Southwest Inc.](#), 2011-NMSC-037, 150 N.M. 428, 260 P.3d 414 (2011).
- 6 [Hannah v. Kenny](#), 210 Ga. 824, 83 S.E.2d 1 (1954); [Carpenter v. Ruperto](#), 315 N.W.2d 782 (Iowa 1982); [Bel v. Manuel](#), 234 La. 135, 99 So. 2d 58 (1958); [Estate of Stone v. Hanson](#), 621 A.2d 852 (Me. 1993) (statute applicable only to uncultivated lands); [Williams v. Howell](#), 108 N.M. 225, 770 P.2d 870 (1989).
- 7 [Harness v. Wallace](#), 167 S.W.3d 288 (Mo. Ct. App. S.D. 2005).
- 8 [Frazier v. Smallseed](#), 384 S.C. 56, 682 S.E.2d 8 (Ct. App. 2009).  
One who enters adversely under color of title and actually possesses any part of the tract ordinarily is deemed to have possession of the entire area described in the document constituting color of title. [Penland v. Johnston](#), 97 Ark. App. 11, 242 S.W.3d 635 (2006).

- 9 [Harper v. Smith](#), 582 So. 2d 1089 (Ala. 1991) (shorter period of limitations); [Clark v. Dillard](#), 233 Ark. 760, 346 S.W.2d 684 (1961); [Peters v. Smuggler-Durant Min. Corp.](#), 930 P.2d 575 (Colo. 1997) (shorter period of limitations); [Walker v. Sapelo Island Heritage Authority](#), 285 Ga. 194, 674 S.E.2d 925 (2009) (shorter period of limitations); [DeChambeau v. Estate of Smith](#), 132 Idaho 568, 976 P.2d 922 (1999) (shorter period of limitations); [Bell v. Gussenhoven](#), 132 Mont. 346, 318 P.2d 251 (1957); [Di Leo v. Pecksto Holding Corporation](#), 304 N.Y. 505, 109 N.E.2d 600 (1952); [Woodring v. Swieter](#), 180 N.C. App. 362, 637 S.E.2d 269 (2006) (shorter period of limitations).
- 10 [Roe v. Doe ex dem. Tennessee Coal, Iron & Ry. Co.](#), 162 Ala. 151, 50 So. 230 (1909); [Richbourg v. Rose](#), 53 Fla. 173, 44 So. 69 (1907); [McBeth v. Wetnight](#), 57 Ind. App. 47, 106 N.E. 407 (1914); [Cothran v. Akers Motor Lines, Inc.](#), 257 N.C. 782, 127 S.E.2d 578 (1962).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 112

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### H. Claim to Property

##### 2. Color of Title

##### a. In General

## § 112. Necessity of good faith

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  13, 68, 84

A party claiming title to property by adverse possession under color of title generally is required to establish that his or her possession of the property was made in good faith.<sup>1</sup> In other words, the occupancy of land under color of title must be with the belief that the occupant's title is valid.<sup>2</sup> The good faith of the occupant, in relying on a defective instrument as his or her right to the property, thus is a crucial element to establishing adverse possession based upon color of title.<sup>3</sup>

A claimant who takes color of title with knowledge of its invalidity ordinarily is guilty of bad faith and cannot base adverse possession on that color of title.<sup>4</sup> Knowledge of an adverse claim, however, does not, of itself, indicate bad faith in the claimant.<sup>5</sup> Furthermore, there is some authority that holds that it is not a necessary element of color of title that the claimant thereunder should believe it to be valid for purposes of an adverse possession claim.<sup>6</sup>

#### Observation:

The relevant time period for determining a claimant's good faith, for a claim of adverse possession under color of title, is when the claimant obtained color of title to or took possession of the property, not throughout the period of possession.<sup>7</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Chapter 7 debtor's father did not have the requisite good faith belief, of kind required to establish adverse possession based on color of title, that he had legal title to property as result of prepetition purchase agreement which both he and debtor had abandoned, and in absence of deed executed by both debtor and wife, as required under California law for conveyance of community property. [Collins v. Wolf](#), 591 B.R. 752 (S.D. Cal. 2018).

### [END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- 1 [Snook v. Bowers](#), 12 P.3d 771 (Alaska 2000); [Armour v. Peek](#), 271 Ga. 202, 517 S.E.2d 527 (1999); [Malone v. Smith](#), 355 Ill. App. 3d 812, 291 Ill. Dec. 572, 823 N.E.2d 1158 (4th Dist. 2005); [Schlueter v. Ackerman](#), 215 Md. 173, 137 A.2d 179 (1957); [City of Rio Rancho v. Amrep Southwest Inc.](#), 2011-NMSC-037, 150 N.M. 428, 260 P.3d 414 (2011).
- 2 [Baker v. Schofield](#), 243 U.S. 114, 37 S. Ct. 333, 61 L. Ed. 626 (1917); [Bel v. Manuel](#), 234 La. 135, 99 So. 2d 58 (1958); [Schlueter v. Ackerman](#), 215 Md. 173, 137 A.2d 179 (1957); [State v. King](#), 77 W. Va. 37, 87 S.E. 170 (1915).  
One holding possession under color of title that he or she knows was fraudulently procured cannot acquire prescriptive title. [Armour v. Peek](#), 271 Ga. 202, 517 S.E.2d 527 (1999).
- 3 [Aguayo v. Amaro](#), 213 Cal. App. 4th 1102, 153 Cal. Rptr. 3d 52 (2d Dist. 2013).
- 4 [Dussart v. M. Abdo Mercantile Co.](#), 57 Colo. 423, 140 P. 806 (1914); [Bergesen v. Clauss](#), 15 Ill. 2d 337, 155 N.E.2d 20, 68 A.L.R.2d 446 (1958); [Apodaca v. Hernandez](#), 61 N.M. 449, 302 P.2d 177 (1956).
- 5 [Thurmond v. Espalin](#), 50 N.M. 109, 171 P.2d 325 (1946).
- 6 [Shutt v. Methodist Episcopal Church](#), 187 Ky. 350, 218 S.W. 1020 (1920).
- 7 [Snook v. Bowers](#), 12 P.3d 771 (Alaska 2000).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.



### 3 Am. Jur. 2d Adverse Possession § 113

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### H. Claim to Property

##### 2. Color of Title

##### a. In General

## § 113. Necessity of writing

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  13, 70, 99.1

#### A.L.R. Library

[Adverse possession under parol gift of land, 43 A.L.R.2d 6](#)

In some jurisdictions, a writing is considered to be indispensable to color of title for purposes of adverse possession<sup>1</sup> either as a matter of general law<sup>2</sup> or because of statutory requirements.<sup>3</sup> Thus, an oral transaction, however effective it may be as between the parties, does not constitute color of title.<sup>4</sup> In other jurisdictions, however, color of title, for purposes of an adverse possession claim, may exist in the absence of a writing.<sup>5</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> [Aguayo v. Amaro, 213 Cal. App. 4th 1102, 153 Cal. Rptr. 3d 52 \(2d Dist. 2013\)](#); [B.B. & C. Partnership v. Edelweiss Condominium Ass'n, 218 P.3d 310 \(Colo. 2009\)](#); [Candler Holdings Ltd. I v. Watch Omega](#)

Holdings, L.P., 947 So. 2d 1231 (Fla. 1st DCA 2007); *Gay v. Strain*, 261 Ga. App. 708, 583 S.E.2d 529 (2003); *New Covenant Worship Center v. Wright*, 166 N.C. App. 96, 601 S.E.2d 245 (2004).

To possess color of title for purposes of an adverse possession claim, the claimant must have a writing or a conveyance of some kind that purports to convey the land title to which is claimed. *City of Rio Rancho v. Amrep Southwest Inc.*, 2011-NMSC-037, 150 N.M. 428, 260 P.3d 414 (2011).

2 *Barrett v. Brewer*, 153 N.C. 547, 69 S.E. 614 (1910); *Urbanec v. Urbanec*, 43 N.D. 127, 174 N.W. 880 (1919); *State v. King*, 77 W. Va. 37, 87 S.E. 170 (1915).

3 *Green v. Dixon*, 727 So. 2d 781 (Ala. 1998); *Snook v. Bowers*, 12 P.3d 771 (Alaska 2000); *Lower Latham Ditch Co. v. Loudon Irrigating Canal Co.*, 27 Colo. 267, 60 P. 629 (1900); *Meyer v. Law*, 287 So. 2d 37 (Fla. 1973); *Georgia Power Co. v. Irvin*, 267 Ga. 760, 482 S.E.2d 362 (1997); *Brooks-Scanlon Co. v. Childs*, 113 Miss. 246, 74 So. 147, 2 A.L.R. 1453 (1917); *Currier v. Gonzales*, 78 N.M. 541, 434 P.2d 66 (1967); *General Greene Inv. Co. v. Greene*, 48 N.C. App. 29, 268 S.E.2d 810 (1980); *Power v. Kitching*, 10 N.D. 254, 86 N.W. 737 (1901); *Carnevale v. Dupee*, 783 A.2d 404 (R.I. 2001).

4 *Territory v. Pai-a*, 34 Haw. 722, 1938 WL 6825 (1938); *Joplin Brewing Co. v. Payne*, 197 Mo. 422, 94 S.W. 896 (1906); *Barrett v. Brewer*, 153 N.C. 547, 69 S.E. 614 (1910); *Lyles v. Fellers*, 138 S.C. 31, 136 S.E. 13 (1926).

5 *Davis v. Biddle*, 89 Ind. App. 361, 166 N.E. 301 (1929); *Sowers v. Keedy*, 135 Md. 448, 109 A. 143 (1919); *Russell v. Tennant*, 63 W. Va. 623, 60 S.E. 609 (1908).

As to possession under an oral gift or sale being possession under color of title, see § 121.

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 114

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### H. Claim to Property

##### 2. Color of Title

##### a. In General

## § 114. Necessity of purporting to convey particular property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  70 to 71(2), 100(4)

For an instrument to be effective as color of title, for purposes of an adverse possession claim, it is necessary that it purport to convey the property involved.<sup>1</sup> It also must contain a description of the property transferred<sup>2</sup> so as to render it capable of identification.<sup>3</sup> If the description does not identify the land with the degree of certainty essential to ascertain the boundaries and identity of the property, the instrument does not provide color of title.<sup>4</sup> Thus, a deed is not color of title if it is void for indefiniteness of description,<sup>5</sup> if the description is so bad that the land cannot be located,<sup>6</sup> or if the lands are not described at all.<sup>7</sup>

For purposes of an adverse possession claim, a deed is color of title only for the land designated and described in it.<sup>8</sup> Since one cannot claim color of title by deed beyond what the deed purports to convey,<sup>9</sup> a deed that describes part of a tract does not constitute color of title to the part of the tract not described.<sup>10</sup> The presence of an exception in a deed also forbids the grantee to claim under color of title any of the land embraced in the exception.<sup>11</sup>

Color of title, for adverse possession purposes, cannot be based on a mistake as to the property actually described in a deed.<sup>12</sup> The mere fact that a mistake has been made in describing the land, however, is not fatal.<sup>13</sup>

#### CUMULATIVE SUPPLEMENT

**Cases:**

Proof of the adverse nature of the possession of land is not sufficient to quiet title in the adverse possessor; the land itself must also be described with enough particularity to enable the court to exact the extent of the land adversely possessed and to enter a judgment upon the description. [Siedlik v. Nissen](#), 303 Neb. 784, 931 N.W.2d 439 (2019).

**[END OF SUPPLEMENT]**

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

**Footnotes**

- 1 [Gay v. Strain](#), 261 Ga. App. 708, 583 S.E.2d 529 (2003); [Shepherd v. Cox](#), 191 Miss. 715, 4 So. 2d 217, 136 A.L.R. 1346 (1941); [New Covenant Worship Center v. Wright](#), 166 N.C. App. 96, 601 S.E.2d 245 (2004); [Campbell v. Reed](#), 134 Wash. App. 349, 139 P.3d 419 (Div. 2 2006).
- 2 [New Covenant Worship Center v. Wright](#), 166 N.C. App. 96, 601 S.E.2d 245 (2004); [Campbell v. Reed](#), 134 Wash. App. 349, 139 P.3d 419 (Div. 2 2006).
- 3 [Gay v. Strain](#), 261 Ga. App. 708, 583 S.E.2d 529 (2003).
- 4 [Brannan v. Henry](#), 142 Ala. 698, 39 So. 92 (1905); [Snook v. Bowers](#), 12 P.3d 771 (Alaska 2000); [Worthen v. Rushing](#), 228 Ark. 445, 307 S.W.2d 890 (1957); [Seton v. Swann](#), 650 So. 2d 35 (Fla. 1995); [Georgia Power Co. v. Irvin](#), 267 Ga. 760, 482 S.E.2d 362 (1997); [Carney v. Heinson](#), 133 Idaho 275, 985 P.2d 1137 (1999); [Holcomb v. Swift Coal & Timber Co.](#), 251 Ky. 642, 65 S.W.2d 741 (1933); [Walker v. Polk](#), 208 Miss. 389, 44 So. 2d 477 (1950); [Allen v. Morgan](#), 48 N.C. App. 706, 269 S.E.2d 753 (1980); [Sowles v. Minot](#), 82 Vt. 344, 73 A. 1025 (1909); [Waldron v. Harvey](#), 54 W. Va. 608, 46 S.E. 603 (1904); [Doenz v. Garber](#), 665 P.2d 932 (Wyo. 1983).
- 5 [Bennett v. Rewis](#), 212 Ga. 800, 96 S.E.2d 257 (1957).
- 6 [Hughes v. Heard](#), 215 Ga. 156, 109 S.E.2d 510 (1959).
- 7 [Quality Plastics, Inc. v. Moore](#), 131 Ariz. 238, 640 P.2d 169 (1981); [Hanna v. Palmer](#), 194 Ill. 41, 61 N.E. 1051 (1901).
- 8 [Tilbury v. Osmundson](#), 143 Colo. 12, 352 P.2d 102 (1960); [John Wallingford Fruit House Inc. v. MacPherson](#), 386 A.2d 332 (Me. 1978); [Burns v. Crump](#), 245 N.C. 360, 95 S.E.2d 906 (1957); [State Bank & Trust of Kenmare v. Brekke](#), 1999 ND 212, 602 N.W.2d 681 (N.D. 1999).  
Possession of the west half of a lot under a deed describing the east half was not possession under color of title. [Sorensen v. Costa](#), 32 Cal. 2d 453, 196 P.2d 900 (1948).
- 9 [Fritts v. Ericson](#), 87 Ariz. 227, 349 P.2d 1107 (1960).
- 10 [Johns v. Scobie](#), 12 Cal. 2d 618, 86 P.2d 820, 121 A.L.R. 1404 (1939); [State Bank & Trust of Kenmare v. Brekke](#), 1999 ND 212, 602 N.W.2d 681 (N.D. 1999).
- 11 [Rye v. Baumann](#), 231 Ark. 278, 329 S.W.2d 161 (1959).
- 12 [Fritts v. Ericson](#), 87 Ariz. 227, 349 P.2d 1107 (1960); [John Wallingford Fruit House Inc. v. MacPherson](#), 386 A.2d 332 (Me. 1978); [State Bank & Trust of Kenmare v. Brekke](#), 1999 ND 212, 602 N.W.2d 681 (N.D. 1999).
- 13 [Acord v. Beaty](#), 244 Mo. 126, 148 S.W. 901 (1912).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 115

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### H. Claim to Property

##### 2. Color of Title

##### a. In General

## § 115. Necessity of purporting to convey particular property—Adequacy of description

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  70 to 71(2), 100(4)

For purposes of an adverse possession claim, it is not required that a deed or other instrument, in order to provide color of title, contain such a precise description that the land can be identified without reference to other records to support adverse possession,<sup>1</sup> or that the land be described in metes and bounds, if the description in the deed or instrument permits the land to be identified with reasonable certainty.<sup>2</sup> If the facts warrant it, the court should permit extrinsic evidence in aid of the description provided the description given is susceptible of being made definite by such evidence.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- 1 [Quality Plastics, Inc. v. Moore](#), 131 Ariz. 238, 640 P.2d 169 (1981); [Redfearn v. Kuhia](#), 50 Haw. 77, 431 P.2d 945 (1967); [Bruce v. Cheramie](#), 231 La. 881, 93 So. 2d 202 (1956).  
A commissioner's deed that described the land conveyed as being bounded on the east by Montague Street, on the north and south by lands described in certain deed books at specified pages, and on the west by the land of a named person, contained a description capable of being made certain by testimony at the trial so that it was sufficient to constitute color of title. [Willis v. Johns](#), 55 N.C. App. 621, 286 S.E.2d 646 (1982).
- 2 [Snyder v. Bistran](#), 156 A.D.2d 355, 548 N.Y.S.2d 311 (2d Dep't 1989).
- 3 [Canterberry v. Slade Bros.](#), 232 La. 1081, 96 So. 2d 4 (1957); [Cadwalader v. Price](#), 111 Md. 310, 73 A. 273 (1909); [Fore v. Berry](#), 94 S.C. 71, 78 S.E. 706 (1913).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 116

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### H. Claim to Property

##### 2. Color of Title

##### a. In General

## § 116. Execution, acknowledgment, or recording

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  71(1), 100(2)

A deed or other conveyance may constitute sufficient color of title, for an adverse possession claim, even though it is not duly sealed<sup>1</sup> or acknowledged.<sup>2</sup> In the absence of a statutory requirement to the contrary, an instrument relied on as color of title generally also need not be recorded.<sup>3</sup> Under some statutory provisions, however, recording is necessary for the instrument to constitute color of title.<sup>4</sup> Thus, in some states, the statute of limitations for adverse possession does not begin to run until a deed relied on as color of title has been placed on record.<sup>5</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- <sup>1</sup> [Power v. Kitching](#), 10 N.D. 254, 86 N.W. 737 (1901).
- <sup>2</sup> [Brannan v. Henry](#), 142 Ala. 698, 39 So. 92 (1905).
- <sup>3</sup> [Roberson v. Downing Co.](#), 120 Ga. 833, 48 S.E. 429 (1904); [Culton v. Simpson](#), 265 Ky. 343, 96 S.W.2d 856 (1936); [Attorney General v. Ellis](#), 198 Mass. 91, 84 N.E. 430 (1908); [Eastman, Gardiner & Co. v. Hinton](#), 86 Miss. 604, 38 So. 779 (1905); [Tungsten Holdings, Inc. v. Parker](#), 2001 MT 117, 305 Mont. 329, 27 P.3d 429 (2001).  
For the purpose of establishing possession and dominion under color of title, graveyard authorities claiming title to realty by adverse possession were entitled to show that a deed for the property, which was not recorded and could not be found, had actually been executed and delivered by the then owners for a consideration. [C. L. Gray Lumber Co. v. Pickard](#), 220 Miss. 419, 71 So. 2d 211, 41 A.L.R.2d 920 (1954).

- 4                      Lewis v. Hardin, 512 So. 2d 96 (Ala. 1987); Seton v. Swann, 650 So. 2d 35 (Fla. 1995); Justice v. Mitchell,  
238 N.C. 364, 78 S.E.2d 122 (1953).
- 5                      Fallon v. Davidson, 137 Colo. 48, 320 P.2d 976 (1958).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government  
Works.



### 3 Am. Jur. 2d Adverse Possession § 117

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### H. Claim to Property

##### 2. Color of Title

##### a. In General

## § 117. Conveyance or deprivation of color of title

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  70, 100(1)

One in possession of land under either an actual or a colorable title cannot, after the occupant has conveyed whatever title was possessed, sustain a claim of adverse possession under a claimed color of title.<sup>1</sup> Likewise, one in possession of land under an actual or colorable title generally is deprived of the color of title relied on to sustain a claim of adverse possession on the involuntary sale of the land under authority of law, such as a sale under execution on a judgment, or a tax sale, or a sale under a power of sale in a mortgage executed by the claimant.<sup>2</sup> If a tax foreclosure decree, however, does not expressly cancel or otherwise deal with the owner's deed, that deed continues to constitute color of title.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> [Cagle v. Sabine Valley Timber & Lumber Co.](#), 109 Tex. 178, 202 S.W. 942, 6 A.L.R. 1426 (1918).
- <sup>2</sup> [Lowrey v. Mines](#), 253 Ala. 556, 45 So. 2d 703 (1950); [Cooper v. Cook](#), 220 Ark. 344, 247 S.W.2d 957 (1952); [Shepherd v. Cox](#), 191 Miss. 715, 4 So. 2d 217, 136 A.L.R. 1346 (1941).
- <sup>3</sup> [Clark v. Dillard](#), 233 Ark. 760, 346 S.W.2d 684 (1961).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 118

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### H. Claim to Property

##### 2. Color of Title

##### b. What Constitutes Color of Title

##### (1) In General

## § 118. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  70, 99.1

Color of title, for purposes of adverse possession, is that which gives the semblance or appearance of title but which is not title in fact.<sup>1</sup> It is an instrument, record, or writing which, on its face, professes or appears to pass title, but fails to do so,<sup>2</sup> such as due to the lack of title in the person from whom it comes or the defective mode of conveyance used.<sup>3</sup> Color of title need not be an imperfect title of a sort that could, without aid, ripen into absolute title but need only show some evidence of claimed ownership by the grantee.<sup>4</sup> It is any semblance of title by which the extent of a person's possession can be ascertained.<sup>5</sup>

Color of title as a basis for adverse possession depends entirely on the intent and meaning of the instrument purporting to convey title.<sup>6</sup> A writing that does not on its face profess to pass title, but which expressly states that title will be conveyed at a future time and on certain conditions, is not sufficient to constitute color of title.<sup>7</sup> Color of title can only arise out of a conveyance purporting to convey title to real property but which, because of some defect, fails to do so.<sup>8</sup>

If an instrument actually passes the title to property, it is not color of title.<sup>9</sup>

**Observation:**

Possession of real property taken under authority of a statute is under color of title even if the statute is unconstitutional.<sup>10</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

**Footnotes**

- 1 [Green v. Dixon](#), 727 So. 2d 781 (Ala. 1998); [Hinojos v. Lohmann](#), 182 P.3d 692 (Colo. App. 2008); [Weaver v. Stafford](#), 134 Idaho 691, 8 P.3d 1234 (2000) (overruled on other grounds by, [Weitz v. Green](#), 148 Idaho 851, 230 P.3d 743 (2010)); [Louisa County Conservation Bd. v. Malone](#), 778 N.W.2d 204 (Iowa Ct. App. 2009); [Fear v. Barwise](#), 93 Kan. 131, 143 P. 505 (1914); [Hillsmere Shores Improvement Ass'n, Inc. v. Singleton](#), 182 Md. App. 667, 959 A.2d 130 (2008); [Glass v. Lynchburg Shoe Co.](#), 212 N.C. 70, 192 S.E. 899 (1937); [Power v. Kitching](#), 10 N.D. 254, 86 N.W. 737 (1901); [Powers v. Malavazos](#), 25 Ohio App. 450, 6 Ohio L. Abs. 62, 158 N.E. 654 (4th Dist. Scioto County 1927); [Sioux City Boat Club v. Mulhall](#), 79 S.D. 668, 117 N.W.2d 92 (1962); [Central Pac. Ry. Co. v. Tarpey](#), 51 Utah 107, 168 P. 554, 1 A.L.R. 1319 (1917); [Bassett v. City of Spokane](#), 98 Wash. 654, 168 P. 478 (1917); [Selman v. Roberts](#), 185 W. Va. 80, 404 S.E.2d 771 (1991) (rejected on other grounds by, [Brown v. Gobble](#), 196 W. Va. 559, 474 S.E.2d 489 (1996)).
- 2 [Green v. Dixon](#), 727 So. 2d 781 (Ala. 1998); [Gay v. Strain](#), 261 Ga. App. 708, 583 S.E.2d 529 (2003); [Bergesen v. Clauss](#), 15 Ill. 2d 337, 155 N.E.2d 20, 68 A.L.R.2d 446 (1958); [White v. Farabee](#), 713 S.E.2d 4 (N.C. Ct. App. 2011).
- 3 [Gay v. Strain](#), 261 Ga. App. 708, 583 S.E.2d 529 (2003); [White v. Farabee](#), 713 S.E.2d 4 (N.C. Ct. App. 2011); [Knight v. Boner](#), 459 P.2d 205 (Wyo. 1969).
- 4 [Bergesen v. Clauss](#), 15 Ill. 2d 337, 155 N.E.2d 20, 68 A.L.R.2d 446 (1958).
- 5 [Frazier v. Smallseed](#), 384 S.C. 56, 682 S.E.2d 8 (Ct. App. 2009).
- 6 [Davis v. Townsend](#), 435 So. 2d 1280 (Ala. 1983); [Hubbard v. Curtiss](#), 684 P.2d 842 (Alaska 1984); [Sullivan v. Neel](#), 105 Mont. 253, 73 P.2d 206 (1937); [Smith v. Nyreen](#), 81 N.W.2d 769 (N.D. 1957).  
As to the necessity of purporting to convey title to particular property by an instrument, see § 114.
- 7 [Shippen v. Cloer](#), 213 Ga. 172, 97 S.E.2d 563 (1957).
- 8 [Hinojos v. Lohmann](#), 182 P.3d 692 (Colo. App. 2008).
- 9 [Roe v. Doe ex dem. Tennessee Coal, Iron & Ry. Co.](#), 162 Ala. 151, 50 So. 230 (1909); [City of Barnesville v. Stafford](#), 161 Ga. 588, 131 S.E. 487, 43 A.L.R. 1045 (1926); [Abeles v. Pillman](#), 261 Mo. 359, 168 S.W. 1180 (1914); [Morrison v. Linn](#), 50 Mont. 396, 147 P. 166 (1915); [Stoll v. Gottbreht](#), 45 N.D. 158, 176 N.W. 932 (1920).
- 10 [White v. Sparkill Realty Corporation](#), 280 U.S. 500, 50 S. Ct. 186, 74 L. Ed. 578 (1930).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 119

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### H. Claim to Property

##### 2. Color of Title

##### b. What Constitutes Color of Title

##### (1) In General

## § 119. Defective instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  71(1), 99.1, 100(5)

Generally, any instrument purporting to convey land may be color of title, however defective or imperfect it is, and regardless of the reason for its invalidity, and therefore, a claim to the land under such an instrument will be sufficient for purposes of adverse possession if the other requisites of adverse possession are present.<sup>1</sup>

The question is not whether the instrument relied on conveys any actual title but whether it appears to do so; and if the instrument purports on its face to convey title, it will constitute color of title, for an adverse possession claim, even if it conveys no title at all because of matters outside the instrument.<sup>2</sup> In fact, in the absence of statutory authority to the contrary, color of title is generally effective even if there are defects on the face of the instrument of title.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> [Edmonson v. Colwell](#), 504 So. 2d 235 (Ala. 1987); [Holub v. Titus](#), 120 Ark. 620, 180 S.W. 218 (1915); [Johns v. Scobie](#), 12 Cal. 2d 618, 86 P.2d 820, 121 A.L.R. 1404 (1939); [Tarver v. Depper](#), 132 Ga. 798, 65 S.E. 177 (1909); [Chapin v. Stewart](#), 71 Idaho 306, 230 P.2d 998 (1951); [Tennis Coal Co. v. Henseley](#), 198 Ky. 616, 250 S.W. 509 (1923); [Allen v. Paggi Bros. Oil Co.](#), 244 So. 2d 116 (La. Ct. App. 3d Cir. 1971), writ denied, 258 La. 247, 245 So. 2d 716 (1971); [Joplin Brewing Co. v. Payne](#), 197 Mo. 422, 94 S.W. 896 (1906); [Seals](#)

v. Seals, 165 N.C. 409, 81 S.E. 613 (1914); *Mehard v. Little*, 1921 OK 76, 81 Okla. 1, 196 P. 536 (1921); *Theisen v. Qualley*, 42 S.D. 367, 175 N.W. 556 (1919); *Petrusic v. Carson*, 496 P.2d 70 (Wyo. 1972).

As to elements of adverse possession, generally, see § 9.

2 *Shepherd v. Cox*, 191 Miss. 715, 4 So. 2d 217, 136 A.L.R. 1346 (1941).

3 *Bradbury v. Dumond*, 80 Ark. 82, 96 S.W. 390 (1906); *Marr v. Shrader*, 142 Colo. 106, 349 P.2d 706 (1960); *Witherspoon v. Brummett*, 50 N.M. 303, 176 P.2d 187 (1946); *Russell v. Tennant*, 63 W. Va. 623, 60 S.E. 609 (1908).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 120

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### H. Claim to Property

##### 2. Color of Title

##### b. What Constitutes Color of Title

##### (1) In General

## § 120. Contract or mortgage

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  71(1), 76, 99.1

Color of title, for purposes of adverse possession, may be evidenced by a contract for the sale of land.<sup>1</sup> A contract for a deed thus constitutes color of title from and after its execution.<sup>2</sup>

Although there is authority to the contrary,<sup>3</sup> a mortgage of the fee has been held to be a written instrument on which to base color of title for adverse possession even though the mortgagor could not legally mortgage the fee; to hold otherwise would, in effect, make it impossible to establish adverse possession on the basis of a written instrument if it developed that the grantor's title was less than a fee.<sup>4</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

<sup>1</sup> Long v. Pawlowski, 131 Mont. 91, 307 P.2d 1079 (1957); Carrington v. McNeil, 58 A.D.2d 719, 396 N.Y.S.2d 286 (3d Dep't 1977); McNeeley v. South Penn Oil Co., 52 W. Va. 616, 44 S.E. 508 (1903).

As to tax sale contracts, see § 127.

<sup>2</sup> Wilson v. Divide County, 76 N.W.2d 896 (N.D. 1956).

<sup>3</sup> Slemmons v. Massie, 102 N.M. 33, 690 P.2d 1027 (1984).

4 [In re Harlem River Drive, City of New York, 307 N.Y. 447, 121 N.E.2d 414 \(1954\).](#)

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 121

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### H. Claim to Property

##### 2. Color of Title

##### b. What Constitutes Color of Title

##### (1) In General

## § 121. Oral sale or gift

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  70, 99.1

#### A.L.R. Library

[Adverse possession under parol gift of land, 43 A.L.R.2d 6](#)

In jurisdictions in which a writing is not essential to color of title,<sup>1</sup> possession under an oral gift or sale may constitute color of title, for purposes of adverse possession.<sup>2</sup> In other jurisdictions, a parol gift of land does not constitute color of title.<sup>3</sup>

In some jurisdictions in which color of title requires a writing purporting to be evidence of title for an adverse possession claim, possession under a parol gift or sale is not under color of title as to persons not in privity with the donor or seller.<sup>4</sup> However, as between the donee or purchaser in possession under an oral gift and the donor or seller or a person in privity with the donor or seller, the oral gift or sale is color of title.<sup>5</sup>



Footnotes

- 1                    § 113.
- 2                    Waller v. Dansby, 145 Ark. 306, 224 S.W. 615 (1920).
- 3                    Page v. O'Neal, 207 Miss. 350, 42 So. 2d 391 (1949); Lyles v. Fellers, 138 S.C. 31, 136 S.E. 13 (1926).
- 4                    Brooks-Scanlon Co. v. Childs, 113 Miss. 246, 74 So. 147, 2 A.L.R. 1453 (1917).  
As to an instrument purporting to convey title to property, see § 114.
- 5                    Brooks-Scanlon Co. v. Childs, 113 Miss. 246, 74 So. 147, 2 A.L.R. 1453 (1917).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 122

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### H. Claim to Property

##### 2. Color of Title

##### b. What Constitutes Color of Title

##### (1) In General

## § 122. Descent cast

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  78, 99.1

Under the doctrine of descent cast, if a person dies in possession of land and possession is continued by that person's heirs, the possession of the heirs corresponds to the holding of possession under color of title, for purposes of adverse possession, even if the ancestor had no color of title.<sup>1</sup> If the ancestor was never in possession, however, a conveyance to the ancestor cannot accrue to heirs as color of title on their taking possession after the death of the ancestor.<sup>2</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> [Scott v. Bracy](#), 530 So. 2d 799 (Ala. 1988); [Brooks-Scanlon Co. v. Childs](#), 113 Miss. 246, 74 So. 147, 2 A.L.R. 1453 (1917).
- <sup>2</sup> [Brooks-Scanlon Co. v. Childs](#), 113 Miss. 246, 74 So. 147, 2 A.L.R. 1453 (1917); [Barrett v. Brewer](#), 153 N.C. 547, 69 S.E. 614 (1910).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 123

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### H. Claim to Property

##### 2. Color of Title

##### b. What Constitutes Color of Title

##### (1) In General

## § 123. Patent; conveyance of or rights in public land

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  73, 99.1

Color of title for purposes of adverse possession may be predicated on a patent if the patent is void.<sup>1</sup> Confirmation of a foreign government land grant also may be color of title.<sup>2</sup> A wholly unauthorized grant of public land, however, that shows its invalidity on its face is insufficient as the basis of a prescriptive title.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- 1 [Carson v. Turk](#), 146 Ky. 733, 143 S.W. 393 (1912).
- 2 [Del Pozo v. Wilson Cypress Co.](#), 269 U.S. 82, 46 S. Ct. 57, 70 L. Ed. 172 (1925).
- 3 [Tiglao v. Insular Government of Philippine Islands](#), 215 U.S. 410, 30 S. Ct. 129, 54 L. Ed. 257 (1910).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 124

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### H. Claim to Property

##### 2. Color of Title

##### b. What Constitutes Color of Title

##### (2) Judgments and Decrees

## § 124. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  74, 99.1

### A.L.R. Library

[Judgment or decree as constituting color of title](#), 71 A.L.R.2d 404

A defective judgment or decree of a court of record may constitute color of title for purposes of adverse possession in one who takes possession under it.<sup>1</sup> Particular types of invalid or imperfect judgments or decrees that have been held to constitute color of title include—

— a judgment or decree quieting title to, or removing a cloud on title from, the land in question.<sup>2</sup>

— a judgment or decree in partition proceedings.<sup>3</sup>

— a judgment, order, or decree of a probate or comparable court,<sup>4</sup> such as a decree of distribution,<sup>5</sup> a decree of heirship,<sup>6</sup> or an order and confirmation of sale of real property by a probate court.<sup>7</sup>

— a judgment or decree in divorce proceedings.<sup>8</sup>

— a judgment, order, or decree setting apart real property to a widow or to a widow and minor children.<sup>9</sup>

An ejectment judgment in favor of a person cannot form the basis for color of title for that person or one claiming under that person, because such a judgment does not purport to convey title, as required for instruments to be color of title for purposes of adverse possession.<sup>10</sup> Similarly, because an ex parte judgment sending heirs or legatees into possession of an estate is not, and does not purport to be, a transfer of title, it cannot serve as a basis for adverse possession.<sup>11</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

## Footnotes

- 1 Aguayo v. Amaro, 213 Cal. App. 4th 1102, 153 Cal. Rptr. 3d 52 (2d Dist. 2013); David v. Tucker, 140 Ga. 240, 78 S.E. 909 (1913); Peters v. Dicus, 254 Ill. 379, 98 N.E. 560 (1912); Quintana v. Montoya, 64 N.M. 464, 330 P.2d 549, 71 A.L.R.2d 397 (1958); Perry v. Bassenger, 219 N.C. 838, 15 S.E.2d 365 (1941); Smith v. Nyreen, 81 N.W.2d 769 (N.D. 1957); Southern Iron & Coal Co. v. Schwoon, 124 Tenn. 176, 135 S.W. 785 (1911); Waldron v. Harvey, 54 W. Va. 608, 46 S.E. 603 (1904).
- 2 Satariano v. Galletto, 66 Cal. App. 2d 813, 153 P.2d 201 (1st Dist. 1944); Marvin v. Witherbee, 63 Colo. 469, 168 P. 651 (1917); Wallis v. Clinkenbeard, 214 Iowa 343, 242 N.W. 86 (1932); Quintana v. Montoya, 64 N.M. 464, 330 P.2d 549, 71 A.L.R.2d 397 (1958).
- 3 Peters v. Dicus, 254 Ill. 379, 98 N.E. 560 (1912); John L. Roper Lumber Co. v. Richmond Cedar Works, 165 N.C. 83, 80 S.E. 982 (1914); Tellico Mfg. Co. v. Williams, 59 S.W. 1075 (Tenn. Ch. App. 1900).
- 4 Quick v. Quick, 267 Ala. 560, 103 So. 2d 157 (1958); Stacy v. Simpson, 91 N.M. 350, 573 P.2d 1205 (1978).
- 5 Baker v. Baker, 4 Cal. 2d 235, 48 P.2d 685 (1935); Cranston v. Winters, 238 N.W.2d 647 (N.D. 1976); Records v. Miles, 1948 OK 71, 200 Okla. 62, 191 P.2d 918 (1948); Nicholas v. Cousins, 1 Wash. App. 133, 459 P.2d 970 (Div. 3 1969).
- 6 Chapin v. Letcher, 93 N.W.2d 415 (N.D. 1958).
- 7 Belsher v. Russell, 218 Ala. 597, 119 So. 659 (1928).
- 8 Apodaca v. Hernandez, 61 N.M. 449, 302 P.2d 177 (1956); Weaver v. Garrietty, 84 S.W.2d 878 (Tex. Civ. App. Dallas 1935), writ refused.
- 9 Quick v. Quick, 267 Ala. 560, 103 So. 2d 157 (1958); Satariano v. Galletto, 66 Cal. App. 2d 813, 153 P.2d 201 (1st Dist. 1944); Wanamaker v. Wanamaker, 215 Ga. 473, 111 S.E.2d 94 (1959).
- 10 Southern Iron & Coal Co. v. Schwoon, 124 Tenn. 176, 135 S.W. 785 (1911).
- 11 As to the requirement of an instrument purporting to convey property, see § 114. Boyet v. Perryman, 240 La. 339, 123 So. 2d 79 (1960).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 125

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### H. Claim to Property

##### 2. Color of Title

##### b. What Constitutes Color of Title

##### (2) Judgments and Decrees

## § 125. Instrument evidencing a judicial or sheriff's sale

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  74, 99.1

A deed given to a purchaser at a judicial sale that is ineffectual as a conveyance will confer color of title on the purchaser for purposes of adverse possession.<sup>1</sup> Similarly, a sheriff's deed that is valid on its face will constitute color of title.<sup>2</sup> A sheriff's certificate of sale also constitutes color of title on which title by adverse possession may be founded.<sup>3</sup>

Color of title may exist under a special master's deed in foreclosure<sup>4</sup> or partition if the proceedings were irregular.<sup>5</sup> Color of title also may exist under the deed of an executor or administrator made pursuant to a void order of sale<sup>6</sup> or under a guardian's deed executed pursuant to a void sale by the guardian.<sup>7</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> Joplin Brewing Co. v. Payne, 197 Mo. 422, 94 S.W. 896 (1906).
- <sup>2</sup> O'Reilly v. Balkwill, 133 Colo. 474, 297 P.2d 263 (1956).
- <sup>3</sup> Commercial Bank & Trust Co. v. Jordan, 85 Mont. 375, 278 P. 832, 65 A.L.R. 968 (1929).
- <sup>4</sup> Matlock v. Somerford, 64 N.M. 347, 328 P.2d 600 (1958).
- <sup>5</sup> Weston v. Morgan, 162 S.C. 177, 160 S.E. 436 (1931).

6 [Millican v. McNeill, 102 Tex. 189, 114 S.W. 106 \(1908\).](#)

7 [Hamilton v. Witner, 50 Wash. 689, 97 P. 1084 \(1908\).](#)

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 126

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### H. Claim to Property

##### 2. Color of Title

##### b. What Constitutes Color of Title

##### (3) Tax Deeds, Certificates, and Contracts of Sale

## § 126. Tax deed

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  79(1) to 79(4), 99.1, 100(6)

### A.L.R. Library

[Void tax deed, tax sale certificate, and the like, as constituting color of title, 38 A.L.R.2d 986](#)

### Forms

Forms relating to tax deed: see Am. Jur. Pleading and Practice Forms, Adverse Possession [\[Westlaw® Search Query\]](#)

A tax deed generally constitutes color of title for the purpose of adverse possession<sup>1</sup> whether or not the tax deed proceedings were valid.<sup>2</sup> A tax deed that is regular on its face but that is defective as a conveyance due to certain irregularities,<sup>3</sup> or that is void,<sup>4</sup> ordinarily constitutes color of title provided the property intended to be conveyed is described with sufficient certainty



and definiteness<sup>5</sup> and provided the tax deed was not fraudulently obtained.<sup>6</sup> Some authorities, however, hold that a void tax deed cannot convey color of title such as would support adverse possession.<sup>7</sup>

Color of title, on which to base adverse possession, has been held to be present under a tax deed although the tax sale was had under an unconstitutional statute<sup>8</sup> or under a void tax judgment.<sup>9</sup> Color of title also has been held to be present under a tax deed although it was based on a void assessment,<sup>10</sup> although it was not conducted as a public sale,<sup>11</sup> although it was conducted at a time and place other than that designated by law,<sup>12</sup> and although the officer who conducted the sale was guilty of a violation of duty with regard to it.<sup>13</sup>

A tax purchase that is in effect a redemption does not vest color of title.<sup>14</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

## Footnotes

- 1 Bell v. Pritchard, 273 Ala. 289, 139 So. 2d 596 (1962); Beshea v. Vlazny, 228 Ark. 559, 309 S.W.2d 28 (1958); Mullins v. Colbert, 898 So. 2d 1149 (Fla. 5th DCA 2005); Monroe v. Rawlings, 331 Mich. 49, 49 N.W.2d 55 (1951); Cebolleta Land Grant, ex rel. Bd. of Trustees of Cebolleta Land Grant v. Romero, 98 N.M. 1, 644 P.2d 515 (1982); Sickler v. Pope, 326 N.W.2d 86 (N.D. 1982); Kimble v. Allen, 1956 OK 135, 298 P.2d 1042 (Okla. 1956).
- 2 Griswold v. Lagge, 132 Mont. 23, 313 P.2d 1013 (1957).
- 3 Brannan v. Henry, 142 Ala. 698, 39 So. 92 (1905); Bradbury v. Dumond, 80 Ark. 82, 96 S.W. 390 (1906); Walters v. Webster, 52 Colo. 549, 123 P. 952 (1912); Douglass v. Aldridge, 90 Fla. 51, 105 So. 145 (1925); Pickens v. Adams, 7 Ill. 2d 283, 131 N.E.2d 38, 56 A.L.R.2d 605 (1955); Tibbetts v. Holway, 119 Me. 90, 109 A. 382 (1920); Ripley v. Miller, 165 Mich. 47, 130 N.W. 345 (1911); Carney v. Anderson, 214 Miss. 504, 58 So. 2d 13, 38 A.L.R.2d 981 (1952); Woodside v. Durham, 317 Mo. 15, 295 S.W. 772, 53 A.L.R. 884 (1927); Beall v. McMenemy, 63 Neb. 70, 88 N.W. 134 (1901); Anderson v. Shelton, 92 N.W.2d 166, 73 A.L.R.2d 1087 (N.D. 1958); Herron v. Swarts, 1960 OK 53, 350 P.2d 314 (Okla. 1960); Welner v. Stearns, 40 Utah 185, 120 P. 490 (1911).  
As to invalidity shown on the face of a tax deed, see § 128.
- 4 Green v. Dixon, 727 So. 2d 781 (Ala. 1998); Bradbury v. Dumond, 80 Ark. 82, 96 S.W. 390 (1906); Myers v. De Lisle, 259 Mo. 506, 168 S.W. 676 (1914); Long v. Pawlowski, 131 Mont. 91, 307 P.2d 1079 (1957); Beall v. McMenemy, 63 Neb. 70, 88 N.W. 134 (1901); Greenleaf v. Bartlett, 146 N.C. 495, 60 S.E. 419 (1908); Sailer v. Mercer County, 77 N.D. 698, 45 N.W.2d 206, 22 A.L.R.2d 988 (1950); Kimble v. Allen, 1956 OK 135, 298 P.2d 1042 (Okla. 1956); Welner v. Stearns, 40 Utah 185, 120 P. 490 (1911).
- 5 § 114.
- 6 Payne v. Williams, 91 Ill. App. 3d 336, 46 Ill. Dec. 783, 414 N.E.2d 836 (5th Dist. 1980).
- 7 Memorial Park Medical Center, Inc. v. River Bend Development Group, L.P., 264 S.W.3d 810 (Tex. App. Eastland 2008).
- 8 Bradbury v. Dumond, 80 Ark. 82, 96 S.W. 390 (1906).
- 9 Woodside v. Durham, 317 Mo. 15, 295 S.W. 772, 53 A.L.R. 884 (1927).
- 10 Florida Finance Co. v. Sheffield, 56 Fla. 285, 48 So. 42 (1908); Jacobs v. Southern Advance Bag & Paper Co., 228 La. 462, 82 So. 2d 765 (1955).
- 11 Doe v. Roe, 234 Ga. 127, 214 S.E.2d 880 (1975).
- 12 Carney v. Anderson, 214 Miss. 504, 58 So. 2d 13, 38 A.L.R.2d 981 (1952).
- 13 Greenleaf v. Bartlett, 146 N.C. 495, 60 S.E. 419 (1908).
- 14 Rouse v. Teeter, 214 Ark. 488, 216 S.W.2d 869 (1948).

### 3 Am. Jur. 2d Adverse Possession § 127

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### H. Claim to Property

##### 2. Color of Title

##### b. What Constitutes Color of Title

##### (3) Tax Deeds, Certificates, and Contracts of Sale

## § 127. Tax purchase certificate or tax sale contract

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  79(1), 99.1, 100(6)

In some jurisdictions, a tax purchase certificate, under the statutory definition and limitations imposed respecting the use of evidences of title for prescriptive or limitation purposes, cannot be construed to purport to convey title and cannot, irrespective of its invalidity, become color of title for purposes of adverse possession.<sup>1</sup> In other cases, however, a certificate of purchase issued at a tax sale has been held to be color of title.<sup>2</sup>

A tax sale contract between a county whose title under its tax deed is void and a tax sale purchaser vests the purchaser with color of title.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

<sup>1</sup> [Kenworthy v. Murphy](#), 1951 OK 13, 204 Okla. 233, 228 P.2d 382 (1951); [Bozievich v. Slechta](#), 109 Utah 373, 166 P.2d 239 (1946).

As to the requirement of an instrument purporting to convey property, see [§ 114](#).

<sup>2</sup> [Power v. Kitching](#), 10 N.D. 254, 86 N.W. 737 (1901); [Calvary Baptist Church of Baker v. Saxton](#), 117 Or. 125, 242 P. 616 (1925).

3 [Anderson v. Shelton, 92 N.W.2d 166, 73 A.L.R.2d 1087 \(N.D. 1958\).](#)

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 128

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### H. Claim to Property

##### 2. Color of Title

##### b. What Constitutes Color of Title

##### (3) Tax Deeds, Certificates, and Contracts of Sale

## § 128. Invalidity on the face of tax deed or tax sale proceeding

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  79(1) to 79(4), 99.1, 100(6)

#### A.L.R. Library

[Void tax deed, tax sale certificate, and the like, as constituting color of title, 38 A.L.R.2d 986](#)

It has been held that a tax deed constitutes color of title to the land for the purpose of adverse possession even if it is absolutely void, and even if the cause of the invalidity appears on the face of the deed, if the deed follows the ordinary form for such deeds, is executed by an official having general authority to make such deeds, and purports by apt words to convey land either described accurately or so referred to as to permit of its accurate identification.<sup>1</sup> It has also been held, however, that a tax deed that is void on its face is not in itself sufficient to set the statute of limitations for adverse possession in motion.<sup>2</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- 1                    [Brannan v. Henry](#), 142 Ala. 698, 39 So. 92 (1905); [Bradbury v. Dumond](#), 80 Ark. 82, 96 S.W. 390 (1906); [Walters v. Webster](#), 52 Colo. 549, 123 P. 952 (1912); [Florida Finance Co. v. Sheffield](#), 56 Fla. 285, 48 So. 42 (1908); [Hanna v. Palmer](#), 194 Ill. 41, 61 N.E. 1051 (1901); [Carney v. Anderson](#), 214 Miss. 504, 58 So. 2d 13, 38 A.L.R.2d 981 (1952); [Greenleaf v. Bartlett](#), 146 N.C. 495, 60 S.E. 419 (1908); [Grandin v. Gardiner](#), 63 N.W.2d 128 (N.D. 1954); [Wilson v. Hestand](#), 1956 OK 187, 301 P.2d 194 (Okla. 1956); [Buty v. Goldfinch](#), 74 Wash. 532, 133 P. 1057 (1913).
- 2                    As to the requirement of an instrument purporting to convey property, see § 114.  
                     [Mathews v. Blake](#), 16 Wyo. 116, 92 P. 242 (1907).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 129

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### H. Claim to Property

##### 2. Color of Title

##### b. What Constitutes Color of Title

##### (4) Deeds

## § 129. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  70, 71(1), 100(1)

Color of title for the purpose of adverse possession may be evidenced by a deed<sup>1</sup> by one purporting to have authority to convey the property.<sup>2</sup> Specifically, a quitclaim deed<sup>3</sup> or a deed for partition<sup>4</sup> may serve as color of title for an adverse possession claim.

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- <sup>1</sup> [White v. Farabee](#), 713 S.E.2d 4 (N.C. Ct. App. 2011).
- <sup>2</sup> [Ziegler v. Serrano](#), 74 A.D.3d 1610, 905 N.Y.S.2d 297 (3d Dep't 2010).
- <sup>3</sup> [Gigger v. White](#), 277 Ga. 68, 586 S.E.2d 242 (2003); [Waterman Hall v. Waterman](#), 220 Ill. 569, 77 N.E. 142 (1906); [Bel v. Manuel](#), 234 La. 135, 99 So. 2d 58 (1958); [Lambert v. State](#), 211 Miss. 129, 51 So. 2d 201 (1951); [Schumacher v. Cole](#), 131 Mont. 166, 309 P.2d 311 (1957); [Thurmond v. Espalin](#), 50 N.M. 109, 171 P.2d 325 (1946); [Morrison v. Hawksett](#), 64 N.W.2d 786 (N.D. 1954); [Graniteville Co. v. Williams](#), 209 S.C. 112, 39 S.E.2d 202 (1946); [Lloyd v. Mills](#), 68 W. Va. 241, 69 S.E. 1094 (1910).
- <sup>4</sup> [Bingham v. Brooks](#), 359 S.W.2d 618 (Ky. 1962).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 130

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### H. Claim to Property

##### 2. Color of Title

##### b. What Constitutes Color of Title

##### (4) Deeds

## § 130. Void or voidable deed or conveyance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  71(2), 71(3), 100(5)

Since color of title, for purposes of adverse possession, precludes the idea of a valid paper title,<sup>1</sup> color of title is established by a possession held under a deed which, as a conveyance, is either voidable<sup>2</sup> or void.<sup>3</sup> Thus, an adverse possessor may claim under a color of title of a defective<sup>4</sup> or invalid deed,<sup>5</sup> such as one made by a grantor who was without interest or title in the land conveyed<sup>6</sup> or had no authority to convey the property.<sup>7</sup> A deed from one who obtained the deed pursuant to a defective or void foreclosure constitutes color of title.<sup>8</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> § 118.
- <sup>2</sup> *Turner v. Sanchez*, 50 N.M. 15, 168 P.2d 96, 164 A.L.R. 1280 (1946); *Hamilton v. Witner*, 50 Wash. 689, 97 P. 1084 (1908).
- <sup>3</sup> *Bell v. Pritchard*, 273 Ala. 289, 139 So. 2d 596 (1962); *B.B. & C. Partnership v. Edelweiss Condominium Ass'n*, 218 P.3d 310 (Colo. 2009); *Carpenter v. Booker*, 131 Ga. 546, 62 S.E. 983 (1908); *J.B. Gathright Land Co. v. Begley*, 200 Ky. 808, 255 S.W. 837 (1923); *C. L. Gray Lumber Co. v. Pickard*, 220 Miss. 419, 71 So. 2d 211, 41 A.L.R.2d 920 (1954); *Criswell v. Criswell*, 101 Neb. 349, 163 N.W. 302 (1917); *Turner v. Sanchez*, 50 N.M. 15, 168 P.2d 96, 164 A.L.R. 1280 (1946); *Alsworth v. Richmond Cedar Works*, 172

N.C. 17, 89 S.E. 1008 (1916); *Hamilton v. Witner*, 50 Wash. 689, 97 P. 1084 (1908); *Marky Inv., Inc. v. Arnezeder*, 15 Wis. 2d 74, 112 N.W.2d 211 (1961).

As to a deed that is void for indefiniteness of description not constituting color of title, see § 114.

4 *B.B. & C. Partnership v. Edelweiss Condominium Ass'n*, 218 P.3d 310 (Colo. 2009).

5 *Matthews v. Crowder*, 281 Ga. 842, 642 S.E.2d 852 (2007).

6 *Jones v. Leagan*, 384 S.C. 1, 681 S.E.2d 6 (Ct. App. 2009).

7 *Commercial Bldg. Co. v. Parslow*, 93 Fla. 143, 112 So. 378 (1927); *Attorney General v. Ellis*, 198 Mass. 91, 84 N.E. 430 (1908); *Barrett v. Brewer*, 153 N.C. 547, 69 S.E. 614 (1910); *Brewster v. Herron*, 1952 OK 440, 267 P.2d 143, 38 A.L.R.2d 335 (Okla. 1952).

A deed from a public corporation that was defective as failing to show that it was within the corporation's authority to execute could afford color of title sufficient to support a claim of adverse possession. *Turner v. Sanchez*, 50 N.M. 15, 168 P.2d 96, 164 A.L.R. 1280 (1946).

8 *Corbett v. Corbett*, 249 N.C. 585, 107 S.E.2d 165 (1959).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.



## 3 Am. Jur. 2d Adverse Possession § 131

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### H. Claim to Property

##### 2. Color of Title

##### b. What Constitutes Color of Title

##### (4) Deeds

## § 131. Fraudulent deed

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  71(1), 100(5)

A fraudulent deed may afford color of title sufficient to support a claim of adverse possession.<sup>1</sup> Some authority holds that a deed will give color of title for purposes of adverse possession if the grantor is chargeable with fraud as long as the grantee accepted the deed in good faith without knowledge of the fraud.<sup>2</sup> If the grantee knows a deed is fraudulent, however, the deed cannot qualify as color of title.<sup>3</sup>

Under a rule that any deed that is not forged or void on its face will support the running of the statute of limitations for adverse possession, a deed that is void because it is in fraud of creditors supports the statute.<sup>4</sup>

### Observation:

Actual fraud is neither sanctioned nor cured by the statute of limitations for adverse possession.<sup>5</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Turner v. Sanchez](#), 50 N.M. 15, 168 P.2d 96, 164 A.L.R. 1280 (1946); [Marky Inv., Inc. v. Arnezeder](#), 15 Wis. 2d 74, 112 N.W.2d 211 (1961).
- 2 [Farabow v. Perry](#), 223 N.C. 21, 25 S.E.2d 173 (1943).  
As to the requirement of good faith, generally, see § 112.
- 3 [New Covenant Worship Center v. Wright](#), 166 N.C. App. 96, 601 S.E.2d 245 (2004).
- 4 [Eckert v. Wendel](#), 120 Tex. 618, 40 S.W.2d 796, 76 A.L.R. 855 (1931).
- 5 [Baker v. Schofield](#), 243 U.S. 114, 37 S. Ct. 333, 61 L. Ed. 626 (1917); [Farabow v. Perry](#), 223 N.C. 21, 25 S.E.2d 173 (1943).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 132

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### H. Claim to Property

##### 2. Color of Title

##### b. What Constitutes Color of Title

##### (4) Deeds

## § 132. Forged deed or bond for title

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  71(1), 100(5)

### A.L.R. Library

[Forged deed or bond for title as constituting color of title, 68 A.L.R.2d 452](#)

A forged deed or bond for title may be relied on by one claiming adverse possession, as constituting color of title,<sup>1</sup> provided the claimant acts in good faith and is without knowledge of the forgery.<sup>2</sup> Thus, although a forged deed cannot of itself convey title, it can, as color of title, constitute one necessary step to the acquisition of title by adverse possession under color of title.<sup>3</sup> Accordingly, a forged deed, accepted by the named grantee for a valuable consideration and in the bona fide belief that it is regular in all respects, is sufficient color of title for adverse possession purposes.<sup>4</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- 1 Bergesen v. Clauss, 15 Ill. 2d 337, 155 N.E.2d 20, 68 A.L.R.2d 446 (1958); Tennis Coal Co. v. Henseley, 198 Ky. 616, 250 S.W. 509 (1923).
- 2 Tennis Coal Co. v. Henseley, 198 Ky. 616, 250 S.W. 509 (1923); Menefee v. Pipes, 159 So. 2d 439 (La. Ct. App. 2d Cir. 1963), writ refused, 245 La. 798, 161 So. 2d 276 (1964).  
As to the requirement of good faith, generally, see § 112.
- 3 Bergesen v. Clauss, 15 Ill. 2d 337, 155 N.E.2d 20, 68 A.L.R.2d 446 (1958).
- 4 Bergesen v. Clauss, 15 Ill. 2d 337, 155 N.E.2d 20, 68 A.L.R.2d 446 (1958).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 133

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### H. Claim to Property

##### 2. Color of Title

##### b. What Constitutes Color of Title

##### (4) Deeds

## § 133. Deed by a cotenant

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  71(1), 100(1)

#### A.L.R. Library

[Possession by stranger claiming under conveyance by cotenant as adverse to other cotenants, 32 A.L.R.2d 1214](#)

A deed by one cotenant purporting to convey the entire estate is sufficient as color of title to the entire estate for purposes of adverse possession.<sup>1</sup> If one cotenant assumes to convey the entire estate, or any part of it, the deed, though legally insufficient, constitutes color of title in the grantee, and an adverse possession under it for the statutory period will ripen into title as against all cotenants.<sup>2</sup>

Ordinarily, a conveyance by one cotenant of only a part of common property, or of an individual interest in the property, to a stranger, and entry of the stranger under the deed, does not constitute an ouster of the grantor's cotenants as to the residue of the common property or the beginning of adverse possession.<sup>3</sup> An entry under such a deed, however, may constitute a basis for adverse possession if the conveyance was made pursuant to a void power of attorney made to the grantor by the other cotenants; the power of attorney, though void, constitutes a basis for color of title.<sup>4</sup>

While a quitclaim deed that conveys only the right, title, and interest of the grantor in the property limits the estate to the right and interest as the grantor may have, and, if the grantor is a cotenant, the deed is not color of title for anything more than the interest of the grantor,<sup>5</sup> a quitclaim deed by one cotenant purporting to convey all interest in a particular tract can be considered as color of title because it purports to convey more than the title and interest of the grantor.<sup>6</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- 1 [Thompson v. Odom](#), 279 Ala. 211, 184 So. 2d 120 (1966); [Jones v. Tate](#), 68 N.M. 258, 360 P.2d 920 (1961).  
As to the effect of a conveyance by a cotenant to a stranger, generally, see §§ 203 to 212.
- 2 [Kidd v. Borum](#), 181 Ala. 144, 61 So. 100 (1913); [Murray v. Quigley](#), 119 Iowa 6, 92 N.W. 869 (1902); [Vonfeldt v. Schneidewind](#), 109 Kan. 265, 198 P. 958 (1921); [Sowers v. Keedy](#), 135 Md. 448, 109 A. 143 (1919); [Joyce v. Dyer](#), 189 Mass. 64, 75 N.E. 81 (1905); [Eastman, Gardiner & Co. v. Hinton](#), 86 Miss. 604, 38 So. 779 (1905); [Sudduth v. Sumeral](#), 61 S.C. 276, 39 S.E. 534 (1901); [Virginia Coal & Iron Co. v. Hylton](#), 115 Va. 418, 79 S.E. 337 (1913); [Lloyd v. Mills](#), 68 W. Va. 241, 69 S.E. 1094 (1910).
- 3 [Laing v. Gauley Coal Land Co.](#), 109 W. Va. 263, 153 S.E. 577, 71 A.L.R. 436 (1930).
- 4 [Laing v. Gauley Coal Land Co.](#), 109 W. Va. 263, 153 S.E. 577, 71 A.L.R. 436 (1930).
- 5 [Cook v. Rochford](#), 60 So. 2d 531, 32 A.L.R.2d 1210 (Fla. 1952).
- 6 [Waterman Hall v. Waterman](#), 220 Ill. 569, 77 N.E. 142 (1906); [Lloyd v. Mills](#), 68 W. Va. 241, 69 S.E. 1094 (1910).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession II I Refs.

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### I. Payment of Taxes

[Topic Summary](#) | [Correlation Table](#)

## Research References

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  86 to 90, 92, 93, 95

#### A.L.R. Library

A.L.R. Index, Adverse Possession

West's A.L.R. Digest, [Adverse Possession](#)  86 to 90, 92, 93, 95

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 134

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### I. Payment of Taxes

##### 1. In General

## § 134. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  86, 87

### Forms

Forms relating to tax, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [[Westlaw® Search Query](#)]

In the absence of a statutory requirement to that effect, a claimant under adverse possession is not required to pay the taxes on the land claimed.<sup>1</sup> Thus, the nonpayment of taxes on adversely possessed land does not in itself destroy an adverse possession claim.<sup>2</sup> Some statutory provisions, however, may make the payment of taxes on the claimed property an element of adverse possession.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- <sup>1</sup> [Garringer v. Wingard](#), 585 So. 2d 898 (Ala. 1991); [Edwards v. Hardin Properties, Inc.](#), 313 So. 2d 82 (Fla. 2d DCA 1975); [Stark v. Stanhope](#), 206 Kan. 428, 480 P.2d 72, 56 A.L.R.3d 1172 (1971); [Fredericksen v. Henke](#), 167 Minn. 356, 209 N.W. 257, 46 A.L.R. 785 (1926); [Ward v. Rodriguez](#), 43 N.M. 191, 88 P.2d 277 (1939); [Krosmico v. Pettit](#), 1998 OK 90, 968 P.2d 345 (Okla. 1998); [Siddons v. Lauterman](#), 165 Or. 668, 109



P.2d 1049 (1941); Harrelson v. Reaves, 219 S.C. 394, 65 S.E.2d 478, 43 A.L.R.2d 1 (1951); Kinder Morgan North Texas Pipeline, L.P. v. Justiss, 202 S.W.3d 427 (Tex. App. Texarkana 2006).  
Doenz v. Garber, 665 P.2d 932 (Wyo. 1983).  
§ 136.

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 135

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### I. Payment of Taxes

##### 1. In General

### § 135. As evidence of adverse claim

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  88, 95

In jurisdictions in which the payment of taxes is not made an element of adverse possession by statute, the claimant's payment of taxes on the claimed property is a proper factor to consider in determining whether a claim of ownership exists or a claim is knowingly adverse<sup>1</sup> or in otherwise determining whether the elements of adverse possession are satisfied.<sup>2</sup> The payment of taxes is a salient<sup>3</sup> or weighty fact in support of adverse possession,<sup>4</sup> but it is not of itself sufficient to establish adverse possession.<sup>5</sup>

The payment of taxes on property can be evidence of a claim of title or ownership for purposes of adverse possession.<sup>6</sup> The payment of taxes, if coupled with other acts, also may constitute some evidence of hostile possession.<sup>7</sup> On the other hand, the failure to pay taxes on the property tends to weaken a claim of ownership by adverse possession.<sup>8</sup> The failure to pay taxes tends to show that possession of the property by that person is not under a claim of right or ownership<sup>9</sup> and is some evidence that no claim of ownership was made.<sup>10</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> [Crone v. Nuss](#), 46 Kan. App. 2d 436, 263 P.3d 809 (2011), review denied, (June 13, 2012).
- <sup>2</sup> [Nennemann v. Rebuck](#), 242 Neb. 604, 496 N.W.2d 467 (1993).
- <sup>3</sup> [Hillsmere Shores Improvement Ass'n, Inc. v. Singleton](#), 182 Md. App. 667, 959 A.2d 130 (2008).
- <sup>4</sup> [Geoghegan v. Krauss](#), 228 Miss. 231, 87 So. 2d 461 (1956).

- 5                    *Faulks v. Schrider*, 114 F.2d 587 (App. D.C. 1940); *Crowden v. Grantland*, 510 So. 2d 238 (Ala. 1987); *Wood v. McCoy*, 228 Ark. 880, 311 S.W.2d 755 (1958); *People v. Ocean Shore R.R.*, 32 Cal. 2d 406, 196 P.2d 570, 6 A.L.R.2d 1179 (1948); *Concord Corp. v. Huff*, 144 Colo. 72, 355 P.2d 73 (1960); *Blitch v. Sapp*, 142 Fla. 166, 194 So. 328 (1940); *Application of Wong*, 47 Haw. 472, 391 P.2d 403 (1964); *Alsup v. Stewart*, 194 Ill. 595, 62 N.E. 795 (1902); *Council Bluffs Sav. Bank v. Simmons*, 243 N.W.2d 634 (Iowa 1976); *John Widdicomb Co. v. Card*, 218 Mich. 72, 187 N.W. 308, 22 A.L.R. 545 (1922); *Woodside v. Durham*, 317 Mo. 15, 295 S.W. 772, 53 A.L.R. 884 (1927); *Corbett v. Corbett*, 249 N.C. 585, 107 S.E.2d 165 (1959); *Knecht v. Spake*, 218 Or. 601, 346 P.2d 98 (1959); *Harlow v. Giles*, 132 S.W.3d 641 (Tex. App. Eastland 2004); *Dillman v. Foster*, 656 P.2d 974 (Utah 1982).
- 6                    *Wicker v. Harvey*, 937 So. 2d 983 (Miss. Ct. App. 2006); *Pahler v. Schoenhals*, 234 S.W.2d 581 (Mo. 1950); *Stark v. Akard*, 1957 OK 181, 313 P.2d 790 (Okla. 1957); *Kinder Morgan North Texas Pipeline, L.P. v. Justiss*, 202 S.W.3d 427 (Tex. App. Texarkana 2006); *Lawrence v. Pelletier*, 154 Vt. 29, 572 A.2d 936 (1990).
- 7                    *Deer Island Ass'n v. Trolle*, 181 Conn. 201, 435 A.2d 10 (1980); *State Nat. Bank and Trust Co. v. Jacobsen*, 218 Neb. 682, 358 N.W.2d 743 (1984); *City of New York v. Wilson & Co.*, 278 N.Y. 86, 15 N.E.2d 408 (1938).
- 8                    *Territory v. Pai-a*, 34 Haw. 722, 1938 WL 6825 (1938); *Hernandez v. Reed*, 2010 OK CIV APP 65, 239 P.3d 186 (Div. 3 2010); *Harrelson v. Reaves*, 219 S.C. 394, 65 S.E.2d 478, 43 A.L.R.2d 1 (1951); *Braunstein v. Robinson Family Ltd. Partnership LLP*, 2010 WY 26, 226 P.3d 826 (Wyo. 2010).
- 9                    *Snow v. Ingenthron*, 285 S.W.3d 415 (Mo. Ct. App. S.D. 2009).
- 10                  *Pearson v. City of Guttenberg*, 245 N.W.2d 519 (Iowa 1976); *Harrelson v. Reaves*, 219 S.C. 394, 65 S.E.2d 478, 43 A.L.R.2d 1 (1951).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 3 Am. Jur. 2d Adverse Possession § 136

American Jurisprudence, Second Edition | May 2021 Update

### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

### II. Elements and Requisites

#### I. Payment of Taxes

#### 2. Statutory Requirements

## § 136. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  87, 89

### Forms

Forms relating to tax, generally, see Am. Jur. Pleading and Practice Forms, Adverse Possession [[Westlaw® Search Query](#)]

Under some state statutes, payment of taxes by an adverse claimant of property is a requisite to establishing title by adverse possession.<sup>1</sup> In those jurisdictions, the statutory requirements must be met,<sup>2</sup> or title by adverse possession cannot be established.<sup>3</sup> The payment of taxes need not be shown, however, if no taxes had been levied or assessed against the property.<sup>4</sup>

The payment of taxes based on an illegal or void assessment does not constitute compliance by an adverse claimant with a statute requiring the payment of all taxes legally assessed as a condition of adverse possession.<sup>5</sup>

It has been held that neither the purchase of land at a tax sale nor the redemption of land from a tax sale ordinarily constitutes a payment of taxes within the purview of a statute requiring the payment of taxes by an adverse claimant.<sup>6</sup> It has also been held, however, that an adverse claimant's payment of back real estate taxes by redemption qualifies as payment for the purposes of adverse possession.<sup>7</sup>

Footnotes

- 1 [Harper v. Smith](#), 582 So. 2d 1089 (Ala. 1991) (for statutory adverse possession, which has a shorter time requirement); [Quality Plastics, Inc. v. Moore](#), 131 Ariz. 238, 640 P.2d 169 (1981); [Clark v. Dillard](#), 233 Ark. 760, 346 S.W.2d 684 (1961); [Ernie v. Trinity Lutheran Church](#), 51 Cal. 2d 702, 336 P.2d 525 (1959); [Candler Holdings Ltd. I v. Watch Omega Holdings, L.P.](#), 947 So. 2d 1231 (Fla. 1st DCA 2007) (adverse possession without color of title); [Baxter v. Craney](#), 135 Idaho 166, 16 P.3d 263 (2000); [Solomon's Rock Trust v. Davis](#), 675 A.2d 506 (Me. 1996); [Tester v. Tester](#), 300 Mont. 5, 3 P.3d 109 (2000); [Potts v. Vokits](#), 101 Nev. 90, 692 P.2d 1304 (1985); [Williams v. Howell](#), 108 N.M. 225, 770 P.2d 870 (1989); [Vandermeide v. Young](#), 2013 UT App 31, 296 P.3d 787 (Utah Ct. App. 2013).
- 2 [McKinnon v. Commerford](#), 88 So. 2d 753 (Fla. 1956); [Uphoff v. Trustees of Tufts College](#), 351 Ill. 146, 184 N.E. 213, 93 A.L.R. 1224 (1932); [Fredericksen v. Henke](#), 167 Minn. 356, 209 N.W. 257, 46 A.L.R. 785 (1926); [Zubieta v. Tarner](#), 76 Nev. 243, 351 P.2d 982 (1960); [Judd v. Meoska](#), 76 S.D. 537, 82 N.W.2d 283 (1957).
- 3 [Hill v. Cape Coral Bank](#), 402 So. 2d 945 (Ala. 1981); [Tobin v. Stevens](#), 204 Cal. App. 3d 945, 251 Cal. Rptr. 587 (1st Dist. 1988); [Herrmann v. Woodell](#), 107 Idaho 916, 693 P.2d 1118 (Ct. App. 1985); [Tester v. Tester](#), 300 Mont. 5, 3 P.3d 109 (2000); [Tripp v. Bagley](#), 74 Utah 57, 276 P. 912, 69 A.L.R. 1417 (1928).
- 4 [Owen v. Boydston](#), 102 Idaho 31, 624 P.2d 413 (1981).
- 5 [Illinois Cent. R. Co. v. Cavins](#), 238 Ill. 380, 87 N.E. 371 (1909); [Grays Harbor Commercial Co. v. McCulloch](#), 113 Wash. 203, 193 P. 709 (1920).
- 6 [Aggelos v. Zella Mining Co.](#), 99 Utah 417, 107 P.2d 170, 132 A.L.R. 213 (1940).  
As to the time or period of payment, generally, see § 139.
- 7 [Tungsten Holdings, Inc. v. Parker](#), 2001 MT 117, 305 Mont. 329, 27 P.3d 429 (2001).

### 3 Am. Jur. 2d Adverse Possession § 137

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### I. Payment of Taxes

##### 2. Statutory Requirements

## § 137. Payment on particular land; effect of insufficient or inaccurate description

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  87, 90

#### A.L.R. Library

[Presumptions and evidence respecting identification of land on which property taxes were paid to establish adverse possession, 36 A.L.R.4th 843](#)

It is essential to the efficacy of payment of taxes as a compliance with a statute making such payment a requisite to establishing title by adverse possession that the payment be made on the particular land claimed adversely.<sup>1</sup> There must be a payment of the taxes as to all of the land claimed and described in the deed or other instrument giving color of title to comply with such a statute.<sup>2</sup>

If the taxes as to the particular land claimed adversely are actually paid, the fact that the land has not been accurately described in the assessment or in the tax receipts will not affect the efficacy of the payment as a compliance with the statute requiring the payment of taxes for adverse possession.<sup>3</sup> Even if the descriptions on the tax receipts are insufficient by themselves to identify the property, as far as the requirements of adverse possession are concerned, the claimant may show by other evidence that the particular land occupied was assessed and that the taxes were paid by the claimant or predecessors of the claimant.<sup>4</sup>

The adverse possession element requiring payment of taxes may be satisfied when the tax assessment is based upon a physical examination of the parcel rather than a metes and bounds description.<sup>5</sup> If taxes are assessed by government survey designation rather than by metes and bounds, a statutory requirement for the payment of taxes may be met by the claimant's payment of taxes on a lot included within the survey.<sup>6</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Seddon v. Harpster](#), 403 So. 2d 409 (Fla. 1981); [Herrmann v. Woodell](#), 107 Idaho 916, 693 P.2d 1118 (Ct. App. 1985).
- 2 [Weston v. Hilliard](#), 232 Ark. 535, 338 S.W.2d 926 (1960); [Hoencke v. Lomax](#), 102 Tex. 487, 119 S.W. 842 (1909).
- 3 [Sorensen v. Costa](#), 32 Cal. 2d 453, 196 P.2d 900 (1948); [Griswold v. Comer](#), 161 S.W. 423 (Tex. Civ. App. Galveston 1913), writ granted, (Oct. 15, 1914) and modified on other grounds, 209 S.W. 139 (Tex. Comm'n App. 1919).
- 4 [Sorensen v. Costa](#), 32 Cal. 2d 453, 196 P.2d 900 (1948).
- 5 [Kennedy v. Schneider](#), 151 Idaho 440, 259 P.3d 586 (2011).
- 6 [Scott v. Gubler](#), 95 Idaho 441, 511 P.2d 258 (1973).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 138

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### I. Payment of Taxes

##### 2. Statutory Requirements

## § 138. Payment by or on behalf of claimant or by both claimant and record owner

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  87, 92

As a general rule, the payment of taxes required by statute as a condition to establishing title to land by adverse possession may be made either by the adverse claimant or by a third person or agent on behalf of the claimant.<sup>1</sup> This is true even if the agent pays the taxes in the agent's name if it is shown to be for the adverse claimant.<sup>2</sup> Thus, an adverse claimant may show that taxes paid in another's name, as indicated on tax receipts, were in fact paid on behalf of the claimant.<sup>3</sup> Payment of taxes by persons in privity with the adverse claimant,<sup>4</sup> such as a predecessor in interest<sup>5</sup> or a beneficiary,<sup>6</sup> is also generally deemed to be payments inuring to the benefit of the adverse claimant. A claimant, however, may not establish statutory adverse possession as to properties on which he or she paid taxes where the claimant did not pay such taxes in his or her own name but in the name of a former cotenant of the properties.<sup>7</sup>

It has been held that the payment of taxes as to the land in question by both the owner and the adverse claimant does not preclude the latter from obtaining the benefit of the payment of taxes.<sup>8</sup> It has also been held, however, that when both the record owner and the adverse occupant pay taxes on the disputed property during the adverse possession period, the adverse possessor prevails.<sup>9</sup> Other authorities hold that if there has been a double payment of taxes, or payment by the record owner and payment or offer of payment by one claiming adversely, the one who paid the taxes first prevails.<sup>10</sup>

Once a person has gained title to land by adverse possession by payment of the taxes and fulfillment of the statutory conditions, a payment of the taxes by the record owner or some other claiming ownership of the land does not affect the title even if the owner by adverse possession has not paid the subsequent taxes.<sup>11</sup>



© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 Cooper v. Carter Oil Co., 7 Utah 2d 9, 316 P.2d 320 (1957).
- 2 Cooper v. Carter Oil Co., 7 Utah 2d 9, 316 P.2d 320 (1957).
- 3 Langley v. Young, 72 Colo. 466, 211 P. 640 (1922); Western Town Lot Co. v. Pettigrew, 40 S.D. 484, 168 N.W. 30 (1918).
- 4 Cooper v. Carter Oil Co., 7 Utah 2d 9, 316 P.2d 320 (1957).
- 5 Comstock v. Finn, 13 Cal. App. 2d 151, 56 P.2d 957 (4th Dist. 1936).
- 6 Kuhn v. Glos, 257 Ill. 289, 100 N.E. 1003 (1913).
- 7 Bohanon v. Edwards, 970 So. 2d 777 (Ala. Civ. App. 2007).
- 8 Pereira Farms Corp. v. Simas, 69 Cal. App. 159, 230 P. 976 (3d Dist. 1924).
- 9 Wilson v. Gladish, 140 Idaho 861, 103 P.3d 474 (Ct. App. 2004).
- 10 McCastlain v. Wylie, 139 Ark. 326, 213 S.W. 743 (1919); Parsons v. Anderson, 690 P.2d 535 (Utah 1984).
- 11 McFarlane v. Morgan, 157 Ark. 97, 248 S.W. 257 (1923); Newsom v. De Ford, 25 Colo. App. 582, 140 P. 207 (1914); Cramer v. Walker, 23 Idaho 495, 130 P. 1002 (1913); Hobson v. Miller, 64 N.M. 215, 326 P.2d 1095 (1958).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

### 3 Am. Jur. 2d Adverse Possession § 139

American Jurisprudence, Second Edition | May 2021 Update

#### Adverse Possession

Barbara J. Van Arsdale, J.D., Janice Holben, J.D. and Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.

#### II. Elements and Requisites

##### I. Payment of Taxes

##### 2. Statutory Requirements

## § 139. Time or period of payment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Adverse Possession](#)  87, 93

Generally, under a statute requiring the payment of taxes as an element of adverse possession, a claimant or the predecessor of a claimant must have paid the taxes for the number of consecutive or successive years comprised in the statutory period, and the failure to pay the taxes for any one or more years of the statutory period is fatal.<sup>1</sup> In other words, the failure of an adverse possession claimant to have paid and discharged all taxes and special assessments due on the land during the adverse possession period will defeat the adverse possession claim.<sup>2</sup> The statutory period during which the taxes on the land claimed adversely must be paid to establish title by adverse possession may be any period of successive years before the commencement of an action trying title and need not be immediately preceding the action.<sup>3</sup>

It has been held that the payment of taxes, for the consecutive years constituting the adverse possession period, at any time when the taxes are payable during the period is a sufficient compliance with the statute.<sup>4</sup> It has also been held, however, that to constitute a sufficient payment of taxes, they must be paid annually and in succession for the full number of years prescribed by the statute so that payment at one time for several years is not a compliance with the statute.<sup>5</sup> Some authority holds that the claimant must pay the taxes of each year for the period prescribed before they become delinquent even under a statute that does not specifically require such prompt payment.<sup>6</sup>

The payment of taxes before the acquisition of color of title or such other interest as may be required by the particular statute is not a compliance with the statute as a payment of taxes during the period prescribed in order to establish title by adverse possession.<sup>7</sup> Similarly, the payment of taxes that were past due at the time of issuance of a tax deed under which title by adverse

possession is claimed may not be counted as one of the necessary successive payments of taxes during adverse possession in order to establish title by adverse possession.<sup>8</sup>

The payment of taxes after the institution of an action relating to the title of land which is claimed by adverse possession is unavailing to aid as a compliance with the statute requiring payment of taxes as a condition of adverse possession.<sup>9</sup>

A statute requiring payment of all taxes which have been legally levied and assessed to establish adverse possession does not require the payment of taxes that are not yet due to sustain a claim of adverse possession.<sup>10</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Under California law, individual who believed that she still owned deed of trust property even after it was sold at foreclosure sale conducted by creditor holding a second deed of trust lien on property, based on representations made to her by representative of first deed of trust holder, with which she was attempting to negotiate loan modification, did not acquire title to property by adverse possession after foreclosure sale purchasers, upon discovering that they had purchased at foreclosure sale conducted by junior lienholder, elected not to record their trustee's deed and to allow debtor to remain in possession while waiting to see if property increased in value to the point where it made sense for them to assume liability on first deed of trust debt; individual, while continuing to occupy property for requisite five-year period following foreclosure sale, did not pay taxes assessed against property during fifth and final year of her adverse occupancy as result of foreclosure sale purchasers' conduct in belatedly exercising their rights in property. *Cal. Civ. Proc. Code § 324. In re Silva*, 539 B.R. 172 (Bankr. C.D. Cal. 2015).

## [END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- 1 [Straub v. Capps](#), 178 Ark. 709, 13 S.W.2d 294 (1928); [Club Land & Cattle Co. v. Wall](#), 99 Tex. 591, 92 S.W. 984 (1906); [Central Pac. Ry. Co. v. Tarpey](#), 51 Utah 107, 168 P. 554, 1 A.L.R. 1319 (1917).  
The conditions for adverse possession based on claim and color of title, made in good faith, and the payment of taxes must concur before the statute begins to run, and seven full years must have intervened between the day when the first payment of taxes was made and the day of the commencement of the litigation. [Malone v. Smith](#), 355 Ill. App. 3d 812, 291 Ill. Dec. 572, 823 N.E.2d 1158 (4th Dist. 2005).
- 2 [Chickamauga Properties, Inc. v. Barnard](#), 853 N.E.2d 148 (Ind. Ct. App. 2006).
- 3 [Deponte v. Ulupalakua Ranch, Limited](#), 48 Haw. 17, 395 P.2d 273 (1964).
- 4 [Rachels v. Stecher Cooperage Works](#), 95 Ark. 6, 128 S.W. 348 (1910); [Murphy v. Redeker](#), 16 S.D. 615, 94 N.W. 697 (1903).
- 5 [Brownstin v. Brelle](#), 193 Wash. 553, 76 P.2d 613 (1938).
- 6 [Houston Oil Co. of Texas v. Niles](#), 255 S.W. 604 (Tex. Comm'n App. 1923).
- 7 [Goldman v. Sotelo](#), 8 Ariz. 85, 68 P. 558 (1902); [Upham v. Weisshaar](#), 23 Colo. App. 277, 128 P. 1129 (1912); [White v. Harris](#), 206 Ill. 584, 69 N.E. 519 (1903).
- 8 [Miller v. Weldon](#), 26 Colo. App. 108, 140 P. 930 (1914).
- 9 [Etchison v. Dail](#), 182 Ark. 350, 31 S.W.2d 426 (1930); [Empire Ranch & Cattle Co. v. Howell](#), 22 Colo. App. 389, 125 P. 592 (1912), rev'd on other grounds, 60 Colo. 188, 152 P. 1175 (1915); [Club Land & Cattle Co. v. Wall](#), 99 Tex. 591, 92 S.W. 984 (1906); [Brownstin v. Brelle](#), 193 Wash. 553, 76 P.2d 613 (1938).
- 10 [Tungsten Holdings, Inc. v. Parker](#), 2001 MT 117, 305 Mont. 329, 27 P.3d 429 (2001).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.